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Taylor v. AIA Services Corp. Clerk's Record v. 10 Dckt. 36916

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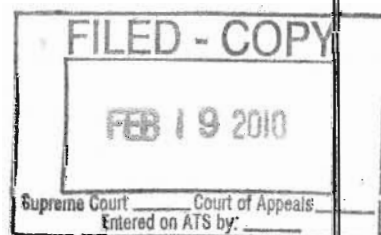
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In the
SUPREME COURT
of the
STATE OF IDAHO

Reed J. Taylor,
Plaintiff-Appellant,

v.

AIA Services Corporation, et al,
Defendants-Respondents.



CLERK'S RECORD ON APPEAL

VOLUME X

Appealed from the District Court of the
Second Judicial District of the State of Idaho,
in and for the County of Nez Perce

The Honorable Jeff M. Brudie

Supreme Court No. 36916-2009

RODERICK C. BOND
ATTORNEY FOR PLAINTIFF-APPELLANT

GARY D. BABBITT
ATTORNEY FOR DEFENDANT AIA CORP-RESPONDENTS

36916

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,)	
)	
Plaintiff-Counterdefendant-Appellant)	
Cross Respondent,)	SUPREME COURT NO. 36916-2009
)	
v.)	
)	
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property comprised thereof, BRIAN FREEMAN,)	
a single person; JOLEE DUCLOS, a single person)	
and JAMES BECK and CORRINE BECK,)	
)	
Defendants-Counterclaimants-)	
Respondents-Cross Appellants-Cross)	
Respondents,)	
)	
and)	
)	
CROP USA INSURANCE AGENCY, INC.,)	
an Idaho corporation;)	
)	
Defendant-Respondent-Cross Respondent,)	
)	
and)	
)	
401(k) PROFIT SHARING PLAN FOR THE)	
AIA SERVICES CORPORATION,)	
)	
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)	

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IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,)	
)	
)	
Plaintiff-Counterdefendant-Appellant-)	
Cross Respondent,)	
)	
v.)	
)	
AIA SERVICES CORPORATION, an Idaho)	
Corporation; AIA INSURANCE, INC., an)	
Idaho corporation; R JOHN TAYLOR,)	SUPREME COURT # 36916-2009
CONNIE TAYLOR individually and the)	
Community property comprised thereof;)	
BRYAN FREEMAN, a single person; JOLEE)	
DUCLOS, a single person and JAMES BECK)	
And CORRINE BECK,)	
)	
Defendants-Counterclaimants-)	
Respondents-Cross Appellants-Cross)	INDEX
Respondents,)	VOLUME X
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and)	
)	
CROP USA INSURANCE AGENCY, INC.,)	
an Idaho corporation; and)	
)	
Defendant-Respondent-Cross Respondent,)	
)	
and)	
)	
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AIA SERVICES CORPORATION,)	
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Plaintiff's Motion to Dissolve Preliminary Injunction filed February 13, 2008	1876-1878
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REQUEST FOR PRODUCTION NO. 41: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to the information requested or provided by you in the preceding Interrogatory (including, without limitation, all loan documents and loan closing documents).

RESPONSE:

REQUEST FOR PRODUCTION NO. 42: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to any correspondence, agreements, notes of communications, or communications to or from any attorney or representative of Hawley, Troxell Ennis & Hawley LLP (including, without limitation, all agreements, prospectuses and any other security filings received or drafted by any such attorney or representative).

RESPONSE:

REQUEST FOR PRODUCTION NO. 43: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to

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any correspondence, agreements, notes of communications, or communications to or from any attorney or representative at Clements, Brown and McNichols (including, without limitation, all agreements, prospectuses and any other security filings received or drafted by any such attorney or representative).

RESPONSE:

REQUEST FOR PRODUCTION NO. 44: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to any correspondence, agreements, notes of communications, or communications to or from any attorney or representative at the Law Offices of David Gittins (including, without limitation, all agreements, prospectuses, documents, any other security filings, or documents received or drafted by any such attorney or representative).

RESPONSE:

REQUEST FOR PRODUCTION NO. 45: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to any agreements, correspondence, notes of communications, or communications between you and

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any of your accountants or auditors.

RESPONSE:

REQUEST FOR PRODUCTION NO. 46: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to any correspondence, agreements, notes of communications, or communications between you and Richard A. Riley or any attorney or representative from the law firm that Richard A. Riley was employed (including, without limitation, all agreements, opinion letters, prospectuses and any other security filing drafted or received by the Richard Riley’s law firm, any other attorney at Richard A. Riley’s law firm or any representative of his firm).

RESPONSE:

REQUEST FOR PRODUCTION NO. 47: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to any correspondence, agreements, notes of communications, or communications between you and any attorney or representative from Quarles & Brady LLP (including, without limitation, all agreements, opinion letters, prospectuses and any other security filing received or drafted by any

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such attorney or representative).

RESPONSE:

REQUEST FOR PRODUCTION NO. 48: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all communications, notes of communications, agreements, correspondence or transactions between you and Randal Lamberjack or any of his agents, attorneys or representatives.

RESPONSE:

REQUEST FOR PRODUCTION NO. 49: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all communications, notes of communications, agreements, correspondence or transactions between you and Adrian Johnson or any of his agents, attorneys or representatives.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 50: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all communications, notes of communications, correspondence or notes pertaining to you and Su Brown or any representative of Su Brown and Associates, PLLC (or any prior or successor entity).

RESPONSE:

REQUEST FOR PRODUCTION NO. 51: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to AIA Services (or any other subsidiary) or AIA Insurance’s ownership interest in Pacific Empire Communications Corporation and how any such interest was later sold, transferred or otherwise disposed of (including, without limitation, copies of checks, agreements, letters, journal entries and any other documents).

RESPONSE:

REQUEST FOR PRODUCTION NO. 52: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements,

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correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all assets (including, without limitation, shares of stock) that you have purchased or acquired from, or sold to, AIA Services, AIA Insurance or Crop USA.

RESPONSE:

REQUEST FOR PRODUCTION NO. 53: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all employment agreements or consulting agreements between you and any entity or person, together with any modifications thereto.

RESPONSE:

REQUEST FOR PRODUCTION NO. 54: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to the termination or modifications of all employment agreements between you and AIA Services, AIA Insurance, Crop USA, Pacific Empire Radio Corporation, or any other entity in which you hold or have held an ownership interest.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 55: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or pertain consulting, advisory agreements, or services agreements between you and any other person or entity.

RESPONSE:

REQUEST FOR ADMISSION NO. 3: Admit that the Executive Officer’s Agreement between R. John Taylor and AIA Services dated effective August 1, 1995 (a copy of which is attached), was a binding and enforceable contract in accordance with its terms and conditions and was not modified during your tenure as a member of the board of directors of AIA Services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 56: If your response to the preceding Request for Admission is anything other than an unequivocal admission, produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or support your Response.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 57: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to the valuation of the Series C Preferred Shares of AIA Services that were purchased by AIA Insurance from Crop USA in 2004 (including, without limitation, all documents pertaining or relating in any way to the valuation or classification of such shares on the financial statements of AIA Insurance).

RESPONSE:

REQUEST FOR PRODUCTION NO. 58: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to any contention by you that AIA Services was not insolvent during your tenure as a member of the board of directors of AIA Services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 59: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all

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communications, notes of communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and JoLee Duclos or any of her agents, attorneys, accountants, or representatives.

RESPONSE:

REQUEST FOR PRODUCTION NO. 60: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all communications, notes of communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and James Beck or any of his agents, attorneys, accountants, or representatives.

RESPONSE:

REQUEST FOR PRODUCTION NO. 61: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all communications, notes of communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and Bryan Freeman or any of his agents, attorneys, accountants, or representatives.

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RESPONSE:

REQUEST FOR PRODUCTION NO. 62: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all notes of communications, communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and Michael Cashman or any of his agents, attorneys, accountants, or representatives.

RESPONSE:

REQUEST FOR PRODUCTION NO. 63: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all notes of communications, communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and Reed Taylor or any of his agents, accountants, attorneys, accountants, or representatives.

RESPONSE:

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INTERROGATORY NO. 6: State with particularity the details of all facts pertaining to all of your defenses or affirmative defenses to all of Reed Taylor's claims and requested relief (e.g., alter ego, constructive trust, etc.), and identify all persons having knowledge of such defenses, their addresses, and describe the knowledge held by each such person.

RESPONSE:

REQUEST FOR PRODUCTION NO. 64: Produce all documents (*See* above definition for "documents" e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to the information requested or provided by you in the preceding Interrogatory.

RESPONSE:

REQUEST FOR PRODUCTION NO. 65: Produce all documents (*See* above definition for "documents" e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to your purchase, acquisition, exchange, transfer, or sale (either proposed or actual) of all shares of stock, options or any other instrument in Crop USA or AIA Services.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 66: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to leases, rental agreements or rental arrangements between you or any entity in which you hold or have held an ownership interest and AIA Services or AIA Insurance and any of the present or past tenants or sub-tenants at the Lewis-Clark Plaza (the building located at 111 Main Street, Lewiston, Idaho), together with all terminations of such leases or rental agreements.

RESPONSE:

REQUEST FOR PRODUCTION NO. 67: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all W-2s, 1099s or all other tax forms provided by you.

RESPONSE:

REQUEST FOR PRODUCTION NO. 68: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to the information contained on the documents bates stamp numbers AIA0001414 through and

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including AIA0001419 of the documents that were produced by AIA Services and/or AIA Insurance, copies of which are attached to these Requests.

RESPONSE:

REQUEST FOR PRODUCTION NO. 69: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all transactions, investments, loans, credits, debits, notes of communications, communications or agreements pertaining to AIA Services’ 401(k) Plan.

RESPONSE:

REQUEST FOR PRODUCTION NO. 70: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all spreadsheets or other documents (in paper or electronic form) analyzing any internal accounting accounts of one or more of the following: AIA Services, AIA Insurance, Crop USA, Pacific Empire Radio Corporation, Pacific Empire Holdings Corporation, Pacific Empire Communications Corporation, Sound Insurance, or R. John Taylor (an example is the document bates stamp numbered AIA0001463 that was produced by AIA Insurance and/or AIA Services, a

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copy of which is attached to these Requests).

RESPONSE:

REQUEST FOR PRODUCTION NO. 71: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all spreadsheets or other documents (in paper or electronic form) created by importing or utilizing accounting information obtained from, or relating to, any one or more of the following: AIA Services, AIA Insurance, Crop USA, Pacific Empire Radio Corporation, Pacific Empire Communications Corporation, Pacific Empire Holdings Corporation, Sound Insurance, or R. John Taylor.

RESPONSE:

REQUEST FOR PRODUCTION NO. 72: Produce all documents (*See* above definition for “documents” e.g., notes, certificates, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to your investment, acquisition of shares, acquisition of any equity instrument, or acquisition of any debt instrument of any privately held corporation or entity.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 73: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all internal or external audits (whether such audit only pertains to certain account(s) or items, or a full audit of all accounts or items) of AIA Services, AIA Insurance, or Crop USA.

RESPONSE:

REQUEST FOR PRODUCTION NO. 74: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to all documents provided or reviewed at board meetings or advisory board meeting of AIA Services, AIA Insurance, or Crop USA (including, without limitation, documents relating to all formal and informal meetings or discussions).

RESPONSE:

REQUEST FOR PRODUCTION NO. 75: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all notes of communications, communications, agreements, arrangements, correspondence or

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transactions between you (*See* above definition for “you”) and Mike Jones or any of his agents, attorneys, accountants, or representatives.

RESPONSE:

REQUEST FOR PRODUCTION NO. 76: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all notes of communications, communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and Kent Petersen or any of his agents, attorneys, accountants, or representatives.

RESPONSE:

REQUEST FOR PRODUCTION NO. 77: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all notes of communications, communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and Jerry Andersen or any of his agents, attorneys, accountants, or representatives.

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REQUEST FOR PRODUCTION NO. 78: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all notes of communications, communications, agreements, arrangements, correspondence or transactions between you, AIA Services, AIA Insurance, or Crop USA and Independent Appraisal or any of its agents, officers, employees, shareholders, board members, managing directors, attorneys, or representatives (including, without limitation, Robert S. Gartrell).

RESPONSE:

REQUEST FOR PRODUCTION NO. 79: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all notes of communications, communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and Martin Hanna or any of his agents, attorneys, accountants, or representatives.

RESPONSE:

REQUEST FOR PRODUCTION NO. 80: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements,

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correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all actions taken by you to comply with all provisions in the Articles of Formation or Incorporation (including any amendments thereto) and Bylaws (including any amendments thereto) of AIA Services, AIA Insurance, or Crop USA (including, without limitation, provisions relating to the guarantee of loans of entities which are not wholly owned subsidiaries of AIA Services and actions required to be taken by board members in instances of conflicts of interest).

RESPONSE:

REQUEST FOR PRODUCTION NO. 81: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to tolling agreements executed by you or any of the defendants in this action.

RESPONSE:

REQUEST FOR PRODUCTION NO. 82: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all proxies for shares of AIA Insurance.

RESPONSE:

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REQUEST FOR PRODUCTION NO. 83: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all notes of communications, communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and Paul Schrette or any of his agents, attorneys, accountants, or representatives.

RESPONSE:

REQUEST FOR PRODUCTION NO. 84: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to transactions or agreements between AIA Services and/or AIA Insurance and Crop USA to offer to purchase, sell, acquire, or exchange any Preferred C Shares of AIA Services for common shares or any other security in Crop USA.

RESPONSE:

REQUEST FOR PRODUCTION NO. 85: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that have not been produced by AIA

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Services or AIA Insurance that evidence, refer, relate in any way to all joint reports, joint websites, joint news releases, summary reports, or any other publication or document issued or referencing AIA Services and/or AIA Insurance and Crop USA (a copy of one example is attached under bates stamp numbers AIA00001140-AIA00001143 of the documents that were previously produced by AIA Services and/or AIA Insurance).

RESPONSE:

REQUEST FOR PRODUCTION NO. 86: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to any notes of communications, communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and Stephanie McFarland or any of her agents, attorneys, accountants, or representatives.

RESPONSE:

REQUEST FOR PRODUCTION NO. 87: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that have not been produced by AIA Services or AIA Insurance that evidence, refer, relate in any way to adjusting journal entries

PLAINTIFF'S FIRST REQUESTS FOR
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ADMISSIONS TO CONNIE TAYLOR - 50

prepared by or for AIA Services, AIA Insurance, or Crop USA.

RESPONSE:

REQUEST FOR PRODUCTION NO. 88: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that have not been produced by AIA Insurance or AIA Services that evidence, refer, relate in any way to all journal entries prepared by or for AIA Services, AIA Insurance, or Crop USA (or for any of the entities in which they conduct business, e.g., Trustmark).

RESPONSE:

REQUEST FOR PRODUCTION NO. 89: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all Accounts Receivable or Accounts Payable (and all supporting documents of accounts receivable and accounts payable) pertaining to you or any entity partially or wholly owned by you since August 1, 1995.

RESPONSE:

PLAINTIFF’S FIRST REQUESTS FOR
PRODUCTION, FIRST
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ADMISSIONS TO CONNIE TAYLOR - 51

REQUEST FOR PRODUCTION NO. 90: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to any and all complaints, concerns, or any other communications directed to you questioning any of Crop USA, AIA Services, AIA Insurance’s accounting practices, any of Crop USA, AIA Services, or AIA Insurance’s transactions, any of Crop USA, AIA Services or AIA Insurance’s stock exchanges, purchases or sales, Crop USA, AIA Services or AIA Insurance’s account payables or receivables, or asset transfers or sales involving you, Crop USA, AIA Insurance, AIA Services or any entity partially owned by you.

RESPONSE:

REQUEST FOR PRODUCTION NO. 91: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, support, demonstrate or relate in any way to you complying with the fiduciary duties that you owe(d) to AIA Insurance, AIA Services and/or the shareholders of AIA Services or AIA Insurance during the times in which you served as a officer and/or director of AIA Services and/or AIA Insurance.

RESPONSE:

PLAINTIFF’S FIRST REQUESTS FOR
PRODUCTION, FIRST
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ADMISSIONS TO CONNIE TAYLOR - 52

REQUEST FOR PRODUCTION NO. 92: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that you, your attorney, your accountant or any other of your representatives have provided to any other defendant, attorney for any defendant in this action, expert witness for any defendant in this action, or any other representative of any defendant in this action.

RESPONSE:

INTERROGATORY NO. 7: Identify each person you expect to call as an expert witness at trial, the address and telephone number of each expert witness, the subject matter of each expert’s testimony, the substance of the facts and opinions to which each expert is expected to testify, and a summary of the grounds for each opinion.

RESPONSE:

REQUEST FOR PRODUCTION NO. 93: As to each expert witness you expect to call at trial, produce all documents that evidence, refer, or relate in any way to the following:

- a. The biographies, curriculum vitae, or résumés for each expert;

PLAINTIFF’S FIRST REQUESTS FOR
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- b. Copies of all correspondence, engagement letters, and all other documents exchanged between you and any expert witnesses, your attorney and any expert witnesses;
- d. All documents provided to any expert witness;
- e. All documents relied upon or utilized by any expert witnesses; and
- c. Copies of all expert reports relevant, including all drafts of all such reports.

RESPONSE:

INTERROGATORY NO. 8: Identify each person you expect to call as a witness at trial, the address and telephone number of each witness, and the subject matter of each witness' testimony.

RESPONSE:

REQUEST FOR PRODUCTION NO. 94: Produce all documents (*See* above definition for "documents" e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to the information requested or provided by you in the preceding Interrogatory.

RESPONSE:

PLAINTIFF'S FIRST REQUESTS FOR
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ADMISSIONS TO CONNIE TAYLOR - 54

INTERROGATORY NO. 9: State with particularity whether any employee or officer of AIA Insurance or AIA Services has provided any services or work for any other person or entity without being paid for such work or services by the respective person or entity for which the employee performed work or provided services. For each instance, state the name of the employee or officer, and the value of the amount of time expended for such services or work.

RESPONSE:

REQUEST FOR PRODUCTION NO. 95: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to the information requested or provided by you in the preceding Interrogatory.

RESPONSE:

REQUEST FOR PRODUCTION NO. 96: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) pertaining to, involving or referencing all actions taken by the board of directors of AIA Insurance, AIA Services or Crop USA.

RESPONSE:

PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION, FIRST
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ADMISSIONS TO CONNIE TAYLOR - 55

REQUEST FOR PRODUCTION NO. 97: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that authorize AIA Services and/or AIA Insurance to redeem or purchase Series C Preferred Shares in AIA Services Corporation before all the Series A Preferred Shares in AIA Services have been redeemed.

RESPONSE:

REQUEST FOR PRODUCTION NO. 98: Produce all documents that relate in any way to all payments, services provided, employee work, facilities provided, fund advances or fund transfers of any kind from AIA Services or AIA Insurance on behalf of or to Crop USA since the date of its incorporation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 99: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all communications, notes of communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and Aimee Gordon or any of her agents, attorneys or representatives.

PLAINTIFF’S FIRST REQUESTS FOR
PRODUCTION, FIRST
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ADMISSIONS TO CONNIE TAYLOR - 56

RESPONSE:

REQUEST FOR PRODUCTION NO. 100: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all communications, notes of communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and R. John Taylor or any of his agents, attorneys, expert witnesses, or representatives.

RESPONSE:

REQUEST FOR PRODUCTION NO. 101: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all communications, notes of communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and any treasurer, officer, or employee of AIA Services, AIA Insurance or Crop USA regarding the alleged oral modification of Reed Taylor’s Promissory Note in March 2003.

RESPONSE:

PLAINTIFF’S FIRST REQUESTS FOR
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ADMISSIONS TO CONNIE TAYLOR - 57

REQUEST FOR PRODUCTION NO. 102: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to any board meetings or advisory board meeting pertaining to or relating in any way to Crop USA.

RESPONSE:

INTERROGATORY NO. 10: State with particularity the dates (e.g., from month/day/year to month/day/year) that you have served as a director or officer of Crop USA, AIA Services or AIA Insurance.

RESPONSE:

REQUEST FOR PRODUCTION NO. 103: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to the information requested or provided by you in the preceding Interrogatory.

RESPONSE:

PLAINTIFF’S FIRST REQUESTS FOR
PRODUCTION, FIRST
INTERROGATORIES, AND FIRST
ADMISSIONS TO CONNIE TAYLOR - 58

REQUEST FOR PRODUCTION NO. 104: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that relate in any way to all payments, services provided, employee work, facilities provided, fund advances or fund transfers of any kind from AIA Services or AIA Insurance on behalf of or to Pacific Empire Communications Corporation since the date of its incorporation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 105: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that relate in any way to all payments, services provided, employee work, facilities provided, fund advances or fund transfers of any kind from AIA Services or AIA Insurance on behalf of or to Pacific Empire Holdings Corporation since the date of its incorporation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 106: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that relate in any way to all payments,

PLAINTIFF’S FIRST REQUESTS FOR
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services provided, employee work, facilities provided, fund advances or fund transfers of any kind from AIA Services or AIA Insurance on behalf of or to Pacific Empire Radio Corporation since the date of its incorporation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 107: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that relate in any way to all payments, services provided, employee work, facilities provided, fund advances or fund transfers of any kind from AIA Services or AIA Insurance on behalf of or to R. John Taylor.

RESPONSE:

REQUEST FOR PRODUCTION NO. 108: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that have not been produced by AIA Services or AIA Insurance that were submitted to any bonding company or insurance company for the purpose of obtaining the \$200,000 bond that the Court ordered to be posted for the preliminary injunction against Reed Taylor.

RESPONSE:

PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION, FIRST
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ADMISSIONS TO CONNIE TAYLOR - 60

REQUEST FOR PRODUCTION NO. 109: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that relate in any way to the payments of funds or retainers for the payment of attorneys’ fees or costs for you or any past or present director of AIA Services or AIA Insurance.

RESPONSE:

REQUEST FOR PRODUCTION NO. 110: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that relate in any way to any evidence that Series C Preferred Shares of AIA Services should be redeemed or purchased before paying AIA Services or AIA Insurance’s creditors.

RESPONSE:

REQUEST FOR PRODUCTION NO. 111: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to any evidence or contentions that you did not owe fiduciary duties to the creditors of AIA Services or AIA Insurance during your tenure as an officer or director of AIA Services or AIA

PLAINTIFF’S FIRST REQUESTS FOR
PRODUCTION, FIRST
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ADMISSIONS TO CONNIE TAYLOR - 61

Insurance.

RESPONSE:

REQUEST FOR PRODUCTION NO. 112: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, relate in any way, or pertain to any modification or potential modification of the Promissory Note, Stock Redemption Restructure Agreement, Amended and Restated Stock Pledge Agreement, or Amended and Restated Security Agreement entered into between Reed Taylor, AIA Services Corporation and/or AIA Insurance, Inc., including, but not limited to, all proposed agreements and draft agreements prepared by R John Taylor, AIA Services Corporation, AIA Insurance Inc., or lawyers for any of the other defendants, and all responses, if any, to such modifications and potential modifications by or on behalf of Reed J. Taylor.

RESPONSE:

REQUEST FOR PRODUCTION NO. 113: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all formation documents (including, articles of formation), subscription agreements, Bylaws,

PLAINTIFF’S FIRST REQUESTS FOR
PRODUCTION, FIRST
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ADMISSIONS TO CONNIE TAYLOR - 62

shareholder agreements, voting agreements, and your stock certificates pertaining to any privately entity in which you hold or have held an ownership interest or from which you have received compensation.

RESPONSE:

INTERROGATORY NO. 11: State with particularity the specific dates of all board meetings, shareholder meetings, and advisory board meetings of AIA Services, AIA Insurance or Crop USA that you have attended. For each meeting, state with particularity the name and address of the persons present at each meeting, the subject matter of the meeting, the location of the meeting, and the result of the meeting.

RESPONSE:

REQUEST FOR PRODUCTION NO. 114: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to the information requested or provided by you in the preceding Interrogatory.

RESPONSE:

PLAINTIFF’S FIRST REQUESTS FOR
PRODUCTION, FIRST
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REQUEST FOR ADMISSION NO. 4: Admit that Clark and Feeney acted as attorneys for Reed Taylor, R. John Taylor, and Dallan Taylor in another legal action at the time you retained Jon Hally to represent you in this action.

RESPONSE:

INTERROGATORY NO. 12: For every board resolution or other corporate action of AIA Services or AIA Insurance during the period of time in which you were a director and/or officer of AIA Services or AIA Insurance, state with particularity the specific actions, steps, or due diligence taken by you to ensure that you complied with your fiduciary duties owed to AIA Services, AIA Insurance and/or their respective shareholder(s) for each such resolution or corporate action.

RESPONSE:

REQUEST FOR PRODUCTION NO. 115: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, or relate in any way to the information requested or provided by you in the preceding Interrogatory.

RESPONSE:

PLAINTIFF'S FIRST REQUESTS FOR
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INTERROGATORIES, AND FIRST
ADMISSIONS TO CONNIE TAYLOR - 64

REQUEST FOR PRODUCTION NO. 116: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to your dissolution with R. John Taylor (including, without limitation, all payments, agreements, pleadings, settlement agreements, appraisals, valuation reports, expert witness reports, sealed documents, divisions of assets or liabilities, distributions of assets or liabilities, correspondence, emails, court orders, and settlements).

RESPONSE:

REQUEST FOR PRODUCTION NO. 117: Produce all documents (*See* above definition for “documents” e.g., notes, emails, electronic files, canceled checks, statements, agreements, correspondence, letters, expert witness reports, etc.) that evidence, refer, relate in any way to all communications, notes of communications, agreements, arrangements, correspondence or transactions between you (*See* above definition for “you”) and AIA Insurance, AIA Services, Pacific Empire Holdings Corporation, or Crop USA or any of their respective agents, employees, directors, officers, accountants, auditors, attorneys, expert witnesses, or representatives.

RESPONSE:

PLAINTIFF’S FIRST REQUESTS FOR
PRODUCTION, FIRST
INTERROGATORIES, AND FIRST
ADMISSIONS TO CONNIE TAYLOR - 65

DATED: This 21st day of October, 2007.

SMITH, CANNON & BOND PLLC
AHLERS & CRESSMAN PLLC

By: 

Roderick C. Bond
Ned A. Cannon
Paul R. Cressman, Jr.
Attorneys for Plaintiff

VERIFICATION

STATE OF IDAHO)
) ss.
COUNTY OF NEZ PERCE)

I, Connie Taylor, being first duly sworn on oath, deposes and says:

I have read the contents of the above Answers and Responses to Reed Taylor's First Set of Requests for Production of Documents, First Set Interrogatories and First Set of Requests for Admission, know the contents of thereof, and certify that the above Responses and Answers are true and accurate to the best of my knowledge and belief.

Connie Taylor

PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION, FIRST
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ADMISSIONS TO CONNIE TAYLOR - 66

CERTIFICATE OF SERVICE

I, Roderick C. Bond, declare that, on the date indicated below, I served a true and correct copy of Plaintiff's First Set of Requests for Production, First Set of Interrogatories, and First Set of Requests for Admission to Defendant Connie Taylor on the following parties via the method(s) indicated below:

David A. Gittins
Law Office of David A. Gittins
P.O. Box 191
Clarkston, WA 99403
Attorney for Defendants Duclos and Freeman

Via:

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

Michael E. McNichols
Clements Brown & McNichols
321 13th Street
Lewiston, ID 83501
Attorney for R. John Taylor

Via:

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

Jonathan D. Hally
Clark & Feeney
P.O. Box 285
Lewiston, ID 83501
Attorney for Defendant Connie Taylor

Via:

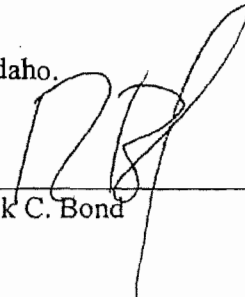
- ☒ U.S. Mail, Postage Prepaid
- ☒ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

Gary D. Babbitt
D. John Ashby
Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701-1617
Attorneys for AIA Services and AIA Insurance

Via:

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

Signed this 21st day of October, 2007, at Lewiston, Idaho.



Roderick C. Bond

PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION, FIRST
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ADMISSIONS TO CONNIE TAYLOR - 67

Exhibit B

AFFIDAVIT OF RODERICK C. BOND IN OPPOSITION TO CONNIE TAYLOR'S MOTION FOR
PROTECTIVE ORDER AND IN SUPPORT OF ORDER TO COMPEL...

JOINT MINUTES OF A SPECIAL MEETING OF DIRECTORS
OF
AIA SERVICES CORPORATION and AIA INSURANCE, INC.

April 30, 2007, telephone conference call, One Lewis Clark Plaza, Lewiston, Idaho.

I. Call to Order

The special directors meeting of the Corporation was called to order by R. John Taylor. On the call were: John Taylor, Connie Taylor, Jim Beck and JoLee Duclos.

II. Appointment of Directors

John Taylor appointed Connie Taylor and James W. Beck to serve on the Boards of AIA Services Corporation and AIA Insurance, Inc. until the next annual meeting of the Boards of Directors.

III. Joint Defense Agreement

A joint retainer agreement and a joint defense agreement proposed by the law firm of Hawley Troxell were reviewed and discussed. Jim Beck moved to accept both agreements. Connie Taylor seconded the motion. John Taylor abstained from the vote, while the other two directors voted affirmatively. Defendants will sign tolling agreements in conjunction with the joint defense agreement.

IV. Current Agreements

The Board determined that current agreements should be reviewed to see if they need to be modified/memorialized to reflect their current status. A bullet point list will be presented at the next meeting.

V. Board Fees

Payment of fees to the Board was discussed. Jim Beck moved and Connie Taylor seconded that the board members would be paid \$5,000 and receive 5,000 shares of stock in AIA Services Corporation for each quarter of service.

III. Adjournment

There being no further business, the meeting was adjourned.

I, JoLee K. Duclos, Secretary of AIA Insurance, Inc., certify that this is a true and correct copy of the minutes of the directors meeting of the Corporation duly held April 30, 2007.

JoLee K. Duclos, Secretary

Exhibit C

AFFIDAVIT OF RODERICK C. BOND IN OPPOSITION TO CONNIE TAYLOR'S MOTION FOR
PROTECTIVE ORDER AND IN SUPPORT OF ORDER TO COMPEL...

1790

SMITH, CANNON
& BOND PLLC

12/16/05

ROBIN CHRISTENSEN
CLERK-DISTRICT COURT
CLEARWATER COUNTY
DROFING, IDAHO

2005 DEC 16 A 8:46

CASE NO WOS-417

BY _____ DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

Defendant.

Case No. CV 05-417

INTERLOCUTORY DECREE OF DIVORCE

The parties having stipulated to entry of an interlocutory decree of divorce, and the court having properly considered the matter and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The bonds of matrimony between plaintiff and defendant are hereby dissolved and the plaintiff is hereby granted an absolute divorce from the defendant on the grounds of irreconcilable differences.

2. R. John Taylor acknowledges service of the Complaint in this matter, and stipulates to entry of an interlocutory decree of divorce, with all property issues not addressed in this stipulation

INTERLOCUTORY DECREE OF DIVORCE

1

CLARK AND FEEN
AFFIDAVIT OF RODERICK C. BOND, OPPOSITION TO CONNIE TAYLOR'S MOTION FOR
PROTECTIVE ORDER AND IN SUPPORT OF ORDER TO COMPEL...
LEWISTON, IDAHO 83501

LAW OFFICES OF
CLARK AND FEENEY

EXHIBIT C

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being reserved. There is no just reason for delay of entry of an interlocutory decree and Rule 54(b) certificate dissolving the marriage at this time.

3. All debt incurred after September 30, 2005 shall be the separate debt of the party incurring it. The parties shall use September 30, 2005 as the valuation date for assets; this date may be revised if the final property division is not completed by September 30, 2006. The parties further agreed that their incomes shall be treated as separate as of January 1, 2005.

5. The parties shall not sell or encumber any community real or personal property without the prior written agreement of the other party.

6. The parties shall maintain and make no changes to existing insurance policies (including but not limited to health, life, and casualty insurance) pending a final resolution of all property issues.

7. As an interim property agreement, and pursuant to the agreement of the parties, it is hereby ordered:

A. Connie shall quitclaim all her interest in 2020 Broadview Drive, Lewiston, Idaho, to John, for the purposes of refinancing and removing Connie's name from the debt on that property.

B. John shall quitclaim all his interest in 3845 Lakeview Drive, Lewiston, Idaho, to Connie, for the purposes of refinancing and removing John's name from the debt on that property.

C. In consideration of the exchange of quitclaim deeds, John shall pay to Connie the sum of \$141,500 no later than February 15, 2006. This amount is based

**INTERLOCUTORY DECREE
OF DIVORCE**

on the Broadview property being appraised at \$690,000 and the Lakeview Property being appraised at \$170,000, and may need to be adjusted if a second appraisal on the Broadview property from U.S. Bank varies significantly.

D. The parties shall jointly own the Freeman Creek cabin property with 20 acres, as well as all contents (including furnishings, appliances, four-wheelers and Four Winns boat), and shall be jointly responsible for all debts relating to that property as of December 1, 2005.

1. Neither party shall make any improvements or incur expenses relating to that property without the agreement of the other party.

2. Neither party shall have the right to sell his or her undivided one-half interest in this property prior to December 7, 2007. A party wishing to sell must give written notice, and the other party shall have a right of first refusal to purchase the seller's interest at appraised value. If that purchase cannot be completed within six months, the property shall be sold and the proceeds divided equally.

E. The parties shall jointly own the ten acre parcel at Freeman Creek, and shall be jointly responsible for all debts relating to that property as of December 1, 2005. Neither party shall have the right to sell his or her undivided one-

INTERLOCUTORY DECREE
OF DIVORCE

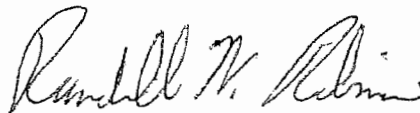
half interest in this property prior to December 7, 2007. A party wishing to sell must give written notice, and the other party shall have a right of first refusal to purchase the seller's interest at appraised value. If that purchase cannot be completed within six months, the property shall be sold and the proceeds divided equally.

F. Parties shall file separate tax returns for 2005. Tax shelter losses and loss carryforward (PEHC, Radio Leasing II, and the radio station building in Idaho Falls) shall be allocated between the parties so as to achieve the maximum benefit and minimize income taxes. The parties shall consult with a mutually agreed accountant on this allocation.

G. The parties agree to make best efforts to resolve the remaining property division issues by March 1, 2006. If that has not occurred, the parties agree to submit to a mediation no later than June 1, 2006.

H. All remaining assets shall be jointly owned pending a final property division.

Dated this 16th day of December, 2005.



Honorable Randy Robinson
Magistrate Judge

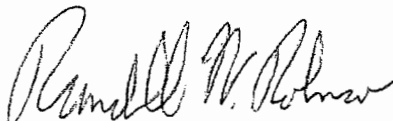
INTERLOCUTORY DECREE
OF DIVORCE

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RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 16th day of December, 2005.



Honorable Randy Robinson
Magistrate Judge

CERTIFICATE OF SERVICE

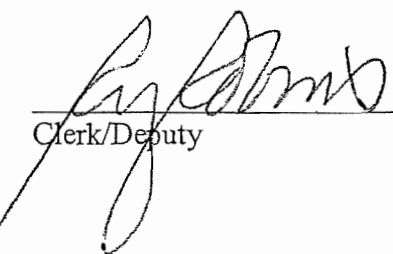
I HEREBY CERTIFY that on the 16th day of December, 2005, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

R. JOHN TAYLOR
ATTORNEY AT LAW
BOX 538
LEWISTON, ID 83501

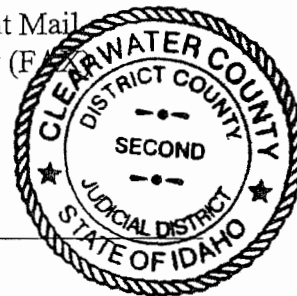
☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (FAX)

CONNIE W. TAYLOR
CLARK AND FEENEY
P O BOX 285
LEWISTON ID 83501

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (FAX)



Clerk/Deputy



**INTERLOCUTORY DECREE
OF DIVORCE**

FILED

2007 DEC 28 PM 3 19

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTYIN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

vs.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an
Idaho corporation; R. JOHN TAYLOR and
CONNIE TAYLOR, individually and the
community property comprised thereof;
BRYAN FREEMAN, a single person; JOLEE
DUCLOS, a single person; CROP USA
INSURANCE AGENCY, INC., an Idaho
Corporation; and JAMES BECK and
CORRINE BECK, individually and the
community property comprised thereof,

Defendants.

Case No. CV-07-00208

ORDER GRANTING LIMITED
ADMISSION OF JAMES J. GATZIOLIS
AND CHARLES E. HARPER

Pursuant to the Motion for Limited Admission of James J. Gatzolis and Charles E.

Harper,

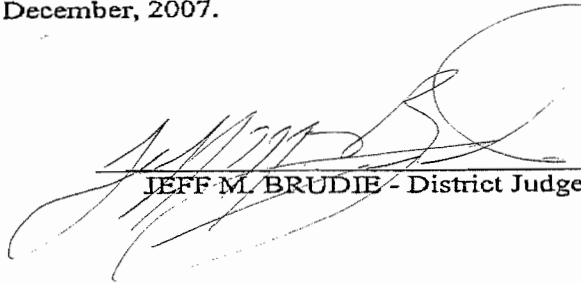
IT IS HEREBY ORDERED that James J. Gatzolis and Charles E. Harper are admitted
pro hac vice to this Court for the sole purpose of appearing to represent CropUSA in this action.ORDER GRANTING LIMITED ADMISSION OF JAMES J. GATZIOLIS AND CHARLES E.
HARPER - 1

40823.0008.1113828.1

ORDER GRANTING LIMITED ADMISSION OF JAMES J. GATZIOLIS AND CHARLES E.
HARPER

1796

DATED THIS 28 day of December, 2007.


JEFF M. BRUDIE - District Judge

ORDER GRANTING LIMITED ADMISSION OF JAMES J. GATZIOLIS AND CHARLES E.
HARPER - 2

40823.0008.1113826.1

ORDER GRANTING LIMITED ADMISSION OF JAMES J. GATZIOLIS AND CHARLES E.
HARPER

1797

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of December, 2007, I caused to be served a true copy of the foregoing ORDER GRANTING LIMITED ADMISSION OF JAMES J. GATZIOLIS AND CHARLES E. HARPER by the method indicated below, and addressed to each of the following:

Roderick C. Bond
Ned A. Cannon
Smith, Cannon & Bond PLLC
508 Eighth Street
Lewiston, ID 83501
[Attorneys for Plaintiff]

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

Paul R. Cressman, Jr.
Ahlers & Cressman PLLC
999 Third Avenue, Suite 3100
Seattle, WA 98104-4088
[Attorneys for Plaintiff]

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

Gary D. Babbitt
D. John Ashby
P.O. Box 1617
Boise, ID 83701
[Attorneys for AIA Services and AIA Insurance]

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

David A. Gittins
Law Office of David A. Gittins
P.O. Box 191
Clarksion, WA 99403
[Attorney for Defendants Duclos and Freeman]

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

Michael E. McNichols
Clements Brown & McNichols
321 13th Street
Lewiston, ID 83501
[Attorneys for Defendant R. John Taylor]

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

Jonathan D. Hally
Clark & Feeney
P.O. Box 285
Lewiston, ID 83501
[Attorneys for Defendant Connie Taylor]

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

ORDER GRANTING LIMITED ADMISSION OF JAMES J. GATZIOLIS AND CHARLES E. HARPER - 3

40823.0008.1113028.1

ORDER GRANTING LIMITED ADMISSION OF JAMES J. GATZIOLIS AND CHARLES E. HARPER

1798

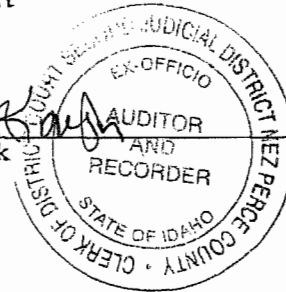
James J. Gatzolis
Charles E. Harper
QUARLES & BRADY LLP
500 West Madison Street, Suite 3700
Chicago, Illinois 60661-2511
[Attorneys for CropUSA Insurance]

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☒ Telecopy

Clerk of the Court

By

Deputy Clerk



ORDER GRANTING LIMITED ADMISSION OF JAMES J. GATZIOLIS AND CHARLES E.
HARPER - 4

40823.0008.1113626.1

ORDER GRANTING LIMITED ADMISSION OF JAMES J. GATZIOLIS AND CHARLES E.
HARPER

1799

FILED

2007 DEC 28 PM 4 38

PATTY O. WEEKS
CLERK OF THE DIST. COURT

Patty Weeks
DEPUTY

RODERICK C. BOND
NED A. CANNON, ISBA #2331
SMITH, CANNON & BOND PLLC
Attorneys for Plaintiff
508 Eighth Street
Lewiston, Idaho 83501
Fax: (208) 746-8421

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an
Idaho corporation; R. JOHN TAYLOR and
CONNIE TAYLOR, individually and the
community property comprised thereof;
BRYAN FREEMAN, a single person; JOLEE
DUCLOS, a single person; CROP USA
INSURANCE AGENCY, INC., an Idaho
Corporation; and JAMES BECK and
CORRINE BECK, individually and the
community property comprised thereof;

Defendants.

Case No.: CV-07-00208

AFFIDAVIT OF RODERICK C. BOND IN
SUPPORT OF MOTION FOR
CONTINUANCE OF TRIAL SETTING

STATE OF IDAHO)
) ss:
COUNTY OF NEZ PERCE)

I, Roderick C. Bond, being first duly sworn on oath, deposes and says:

1. I am over the age of eighteen years, competent to testify in court, one of
the attorneys for the plaintiff Reed Taylor ("Reed"), and make this Affidavit based upon

my personal knowledge.

2. A continuance of the trial setting in this case is necessary for the reasons stated below. A continuance is not based upon dilatory tactics and is predicated solely for the purpose of obtaining additional time necessary to the preparation of the case for trial. Reed's counsel has exercised due diligence thus far in preparing for trial, but the case will not be ready to be tried on February 4, 2008. Justice will be substantially furthered by a continuance and no prejudice to the defendants will result from granting a continuance. In addition, counsel for the defendants agreed that a continuance is warranted when the parties unsuccessfully mediated this case in December 2007.

3. The pleadings in this case are not yet finalized. The status of Reed's Fifth Amended Complaint is pending. Pursuant to the Court's Order of November 29, 2007, Reed has submitted his proposed Fifth Amended Complaint to the Court for its approval before filing contemporaneously with his Motion for a Continuance.

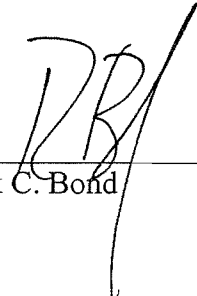
4. Discovery is not complete in this complex and multi-party case. A sample of the discovery issues can be seen in the pending Motion for Protective Order filed by the Defendant Connie Taylor. A similar Motion to Compel will be required of John Taylor if the parties are unable to resolve discovery disputes. Other significant discovery issues remain unresolved pertaining to AIA Services, AIA Insurance and Crop USA. As indicated above, the pleadings have not been finalized to fix the ultimate scope of discovery. The discovery in this case has otherwise proceeded diligently from the perspective of plaintiff. Reed anticipates having to make several motions to compel discovery from the defendants, specifically the production of documents and answers to interrogatories. Rule 37(a)(2) conferences with counsel for the defendants have occurred

and additional conferences appear likely. Although the parties recently agreed to attempt to resolve long standing discovery disputes, there can be no assurances that such disputes will be resolved. In the unfortunate event that discovery disputes are not resolved, Reed Taylor's motions to compel will be contested and it is anticipated this procedure will take significant time on behalf of the parties and the Court.

5. In addition, Reed has delayed taking depositions in this case anticipating the production of documents which have not been forthcoming despite the best efforts of his counsel. The first depositions of John Taylor relating to Reed's claims and causes action are not scheduled until January 28-30, 2008. Reed anticipates needing to depose John for several more days and such days have not yet been scheduled. Reed anticipates taking numerous depositions of various parties to support his claims. Furthermore, Reed has been unable to ascertain exactly what expert witnesses need to be retained and there reports would likely be based at least in part on documents that have not been produced. As a result, it is anticipated that defendants themselves will require additional time to conduct the depositions of Reed's expert witnesses.

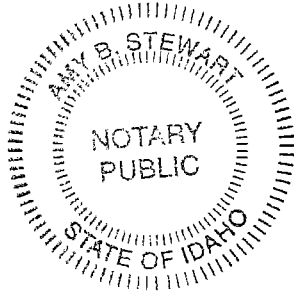
6. Finally, one of plaintiff's attorneys, Paul Cressman Jr., is withdrawing as counsel. Mr. Cressman served as lead counsel. My firm will take on the role as lead counsel and handle all matters, which will require additional time and preparation for the attorneys presently involved. Reed will be prejudiced and justice will not be substantially furthered if his motion for continuance is not granted by the Court.

DATED: This 28th day of December, 2007.



Roderick C. Bond

SUBSCRIBED AND SWORN to before me this 28th day of December, 2007.



Amy B. Stewart
Notary Public for Idaho
Residing at: Leupston
My commission expires: 1/24/2012

FILE

2007 DEC 28 PM 4 38

PATTY D. WEEKS
CLERK OF THE DIST. COURT

[Signature]
DEPUTY

RODERICK C. BOND
NED A. CANNON, ISBA #2331
SMITH, CANNON & BOND PLLC
Attorneys for Plaintiff
508 Eighth Street
Lewiston, Idaho 83501
Telephone: (208) 743-9428
Fax: (208) 746-8421

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an Idaho
corporation; R. JOHN TAYLOR and CONNIE
TAYLOR, individually and the community
property comprised thereof; BRYAN
FREEMAN, a single person; JOLEE DUCLOS,
a single person; CROP USA INSURANCE
AGENCY, INC., an Idaho Corporation; and
JAMES BECK and CORRINE BECK,
individually and the community property
comprised thereof;

Defendants.

Case No.: CV-07-00208

REED TAYLOR'S MOTION AND
MEMORANDUM OF LAW FOR
CONTINUANCE OF TRIAL SETTING

Reed Taylor ("Reed") moves the Court to continue the currently scheduled trial setting
and schedule a new trial setting:

REED TAYLOR'S MOTION TO
CONTINUE TRIAL SETTING - 1

ORIGINAL

1804

I. INTRODUCTION

Although it appears that all parties have agreed that a continuance of the trial setting is necessary, Reed submits this Motion and the Affidavit of Roderick C. Bond to formally move the Court for a continuance. Reed will note the Motion to contemporaneously take place via conference call at the time the Court orders a scheduling conference.

II. LEGAL AUTHORITY AND ARGUMENT

The Court has the authority to continue a trial date pursuant to Rule 5 of the Second Judicial District Local Rules. A decision whether to grant or deny a motion for a continuance is vested in the sound discretion of the trial court. *State v. Ward*, 98 Idaho 571, 569 P.2d 916 (1977).

Here, the trial setting is presently scheduled to commence on February 4, 2008. Based upon the reasons discussed below, a continuance is warranted and necessary.

A. All Parties Have Agreed that the Trial Dates Should Be Continued and a Continuance is Warranted.

The parties have agreed that a continuance is necessary. Although the parties unsuccessfully attempted to mediate this matter, they did agree that a continuance was warranted. Upon instructions from the Court, Reed's counsel contemporaneously provided the Court with the requested letter and filed this Motion for Continuance of Trial Setting.

B. Discovery is Far From Complete Making a Continuance Necessary and Warranted to Permit Reed to Prepare and Present His Claims.

Significant discovery issues remain unresolved. *See* Affidavit of Roderick C. Bond. Presently, the first depositions of John Taylor are scheduled for January 28-30, with additional days likely necessary that have not yet been scheduled. *Id.* In addition, numerous other parties

and non-parties have not been deposed because of the lack of documents. *See* Affidavit of Roderick C. Bond. Justice requires that the Court order a continuance. *Id.*

III. CONCLUSION

For the reasons articulated above, the Court should continue the trial dates presently scheduled for this case and order new trial dates.

Reed will file and serve a Notice of Hearing to take place telephonically at the date and time of the Court's scheduling order.

DATED: This 28th day of December, 2007.

SMITH, CANNON & BOND PLLC

By: 

Roderick C. Bond

Ned A. Cannon

Attorneys for Plaintiff Reed J. Taylor

CERTIFICATE OF SERVICE

I, Roderick C. Bond, declare that, on the date indicated below, I served a true and correct copy of Reed Taylor's Motion and Memorandum of Law to Continue Trial Setting and the Affidavit of Roderick C. Bond w/ Exhibits on the following parties via the methods indicated below:

David A. Gittins
Law Office of David A. Gittins
P.O. Box 191
Clarkston, WA 99403
Attorney for Defendants JoLee Duclos and
Bryan Freeman

Via:

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

Michael E. McNichols
Clements Brown & McNichols
321 13th Street
Lewiston, ID 83501
Attorney for R. John Taylor

Via:

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

Jonathan D. Hally
Clark & Feeney
P.O. Box 285
Lewiston, ID 83501
Attorney for Connie Taylor, James Beck and
Corrine Beck

Via:

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

Gary D. Babbitt
D. John Ashby
Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701-1617
Attorneys for AIA Services, AIA Insurance, and
Crop USA Insurance Agency

Via:

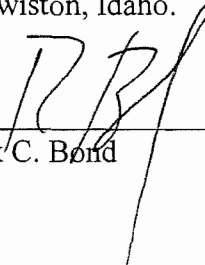
- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

James J. Gatziolis
Charles E. Harper
Quarles & Brady LLP
Citigroup Center, 500 West Madison Street
Suite 3700
Chicago, IL 60661-2511
Attorneys for Crop USA Insurance Agency

Via:

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

Signed this 28th day of December, 2007, at Lewiston, Idaho.



Roderick C. Bond

FILED

2008 JAN 31 PM 2 52

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION an,
Idaho corporation; AIA SERVICES, INC.,
an Idaho corporation, R. JOHN TAYLOR
and CONNIE TAYLOR, individually and
the marital community property comprised
thereof; BRYAN FREEMAN, a single
person; and, JOLEE DUCLOS,
a single person,

Defendants.

CASE NO. CV 07-00208

ORDER SETTING CASE FOR
TRIAL AND PRE-TRIAL
CONFERENCE

IT IS HEREBY ORDERED that the above-named case be set for Jury trial before the
Honorable JEFF M. BRUDIE, District Judge, at the Nez Perce County Courthouse, at Lewiston,
Idaho, at the hour of 9:00 a.m. on the 20th day of October 2008 .

IT IS FURTHER ORDERED parties shall comply with the following:

ORDER SETTING CASE FOR
TRIAL AND PRE-TRIAL
CONFERENCE

disclosure of Plaintiff's expert witnesses on the Complaint shall be on or before April 30, 2008;

disclosure of Defendants' expert witnesses on the Complaint shall be on or before June 30, 2008;

all discovery shall be completed by September 26, 2008;

that a pre-trial conference shall be held on October 2, 2008, at the hour of 2:00 p.m.

Lead counsel trying the case must be personally present at the pretrial conference. Counsel are to notify the Court if they wish the pre-trial conference to be telephonic.

IT IS FURTHER ORDERED at the pre-trial conference each party shall:

- 1) Prepare in writing and submit to the Court in advance of the pre-trial hearing, a concise statement of the claims and/or defenses asserted by that party;
- 2) Prepare a list of exhibits and bring all exhibits to the pre-trial conference to be marked;
- 3) Each counsel shall make a request of opposing counsel for stipulations to as many facts and issues as possible, and be prepared to submit this stipulation to the Court at the pre-trial hearing;
- 4) Be prepared to stipulate the admission of any exhibit or to make specific objections to its admissibility;
- 5) Furnish opposing counsel with names and addresses of all witnesses, the nature of their testimony, experts' reports, and like instruments, and complete all other matters which may expedite both the pre-trial and the trial of this case;
- 6) Discuss the possibilities of settlement;
- 7) Submit to the court at the pre-trial hearing all contentions of law relied upon;

8) Submit to the court and counsel a copy of all jury instructions counsel intends to request at least seven (7) days before the scheduled trial date. The jury instructions shall consist of two copies, one copy containing citations of authority and one copy suitable for submission to the jury. The Court uses the following instructions from IDJI2d and it is not necessary for counsel to submit them: 1.00, 1.01, 1.03, 1.03.1, 1.11, 1.13, 1.15.2, 1.20.1, and 9.00.

DATED this 31 day of January 2008.


JEFF M. BRUDIE- District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing ORDER SETTING FOR TRIAL AND PRETRIAL CONFERENCE was:

_____ hand delivered via court basket, or

☒ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 31st day of January 2008, to:

Roderick Bond
508 Eighth St
Lewiston, ID 83501

James Gatziolis
500 W Madison St., Ste. 3700
Chicago, IL 60661-2511

Michael McNichols
PO Box 1510
Lewiston, ID 83501

*Messenger
Service*

Jonathan Hally
PO Box 285
Lewiston, ID 83501

*Messenger
Service*

David Gittins
PO Box 191
Clarkston WA 99403

Gary Babbitt
D. John Ashby
PO Box 1617
Boise, ID 83701-1617

PATTY O. WEEKS, CLERK

By: *[Signature]*

Deputy



ORDER SETTING CASE FOR
TRIAL AND PRE-TRIAL
CONFERENCE

FILED

2008 FEB 1 PM 12 57

PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

✓
RODERICK C. BOND
NED A. CANNON, ISB #2331
SMITH, CANNON & BOND PLLC
508 8th Street
Lewiston, Idaho 83501
Telephone: (208) 743-9428
Fax: (208) 746-8421
Attorneys for Plaintiff Reed J. Taylor

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an
Idaho corporation; AIA INSURANCE,
INC., an Idaho corporation; R. JOHN
TAYLOR and CONNIE TAYLOR,
individually and the community property
comprised thereof; BRYAN FREEMAN,
a single person; JOLEE DUCLOS, a single
person; CROP USA INSURANCE
AGENCY, INC., an Idaho Corporation; and
JAMES BECK and CORRINE BECK,
individually and the community property
comprised thereof;

Defendants.

Case No.: CV-07-00208

FIFTH AMENDED COMPLAINT

Plaintiff Reed J. Taylor submits this Fifth Amended Complaint against the Defendants
alleging as follows:

FIFTH AMENDED COMPLAINT – 1

ORIGINAL

1813

I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiff Reed J. Taylor (“**Reed**”) is a single person and a resident of Lewiston, Nez Perce County, Idaho.

1.2 Defendant AIA Services Corporation (“**AIA Services**”) is an Idaho corporation with its principal place of business located in Lewiston, Nez Perce County, Idaho.

1.3 Defendant AIA Insurance, Inc. (“**AIA Insurance**”) is an Idaho corporation with its principal place of business is located in Lewiston, Nez Perce County, Idaho. AIA Insurance is a wholly owned subsidiary of AIA Services.

1.4 Defendant Connie Taylor (“**Connie**”) is a single person residing in Lewiston, Nez Perce County, Idaho.

1.5 Defendants R. John Taylor and Connie Taylor, were husband and wife until on or about December 16, 2005 (collectively “**John**”), and at all relevant times were residents of Lewiston, Nez Perce County, Idaho. All references to “**John**” are for acts, omissions, claims, causes of action, damages, and/or liabilities that accrued on or before December 16, 2005, are for John individually, and were also performed on behalf of R. John Taylor and Connie Taylor’s marital community (which benefited from R. John Taylor’s acts and/or omissions) as to divided and undivided community property. All references to “**John**” for acts, omission, claims, causes of action, damages, and/or liabilities that accrued after December 16, 2005, are for John individually and pertain to Connie as to their divided and undivided community property, including, without limitation, community property in which Reed is requesting to be awarded.

1.6 Defendant JoLee Duclos (“**Duclos**”) is a single person residing in Clarkston, Washington.

///

1.7 Defendant Bryan Freeman (“**Freeman**”) is a single person residing in Lewiston, Nez Perce County, Idaho.

1.8 Defendant Crop USA Insurance Agency, Inc. (“**Crop USA**”) is an Idaho corporation, with its principal place of business located in Lewiston, Nez Perce County, Idaho.

1.9 Defendant James Beck and Corrine Beck (individually and collectively “**Beck**”) are residents of the state of Minnesota. All references to “Beck” are for acts, omissions, claims, causes of action, damages, and/or liabilities that accrued are for James Beck individually, and were also performed on behalf of James Beck and Corrine Beck’s marital community (which benefited from James Beck’s acts and/or omissions) and pertain to Corrine Beck as to damages, acts and/or omissions on behalf of their community and as to all community property, including, without limitation, community property Reed is seeking to be awarded.

1.10 The District Court has jurisdiction over this matter under I.C. § 1-705.

1.11 Venue is proper in the District Court of the Second Judicial District, Nez Perce County pursuant to I.C. § 5-404.

II. FACTUAL BACKGROUND

2.1 John, was at all relevant times, an officer and director of AIA Services, AIA Insurance, and Crop USA. During the certain relevant times in which John was a director and officer of AIA Insurance, AIA Services and Crop USA, he owed fiduciary duties to Reed as the single largest creditor of AIA Insurance and AIA Services. John and Connie are the majority shareholders in AIA Services and own approximately 40% of the outstanding shares of Crop USA, specifically 4,645,000 shares as of July 31, 2006.

2.2 R. John Taylor and Connie were divorced through an Interlocutory Decree filed on December 16, 2005, under which only a portion of their community assets were divided and

other property remained undivided. This action includes, but is not limited to, acts, omissions, transactions, debts, claims, and/or causes of action which accrued prior to R. John Taylor and Connie's dissolution. All references to "**John**" in this Complaint are for, but not limited to, claims, causes of action, breaches of duties, fraud, acts, omissions and liabilities incurred by R. John Taylor on behalf of the marital community of R. John Taylor and Connie, together with their community property, whether divided or not through the effective date of their dissolution decree entered on or about December 16, 2005. Reed is requesting and entitled to be awarded shares of stock and property jointly owned by R. John Taylor and Connie.

2.3 After the effective date of R. John Taylor and Connie Taylor's decree of dissolution, all references to "**John**" in this Complaint are for claims, breaches of duties, acts, omissions and/or liabilities incurred by John individually. One of the reasons Connie is named as a party in this action for her liabilities and/or derivative liability by virtue of her marriage to John and her interest in the community property of the marriage (including all divided and undivided community property of their marriage for which Reed is requesting to be awarded through a constructive trust) all of which is subject to liability for the allegations in this Complaint of the acts, breaches of duties, claims, omissions, and conduct of John on and prior to December 16, 2005.

2.4 During the certain relevant times that Connie was a director of AIA Insurance and AIA Services, she owed fiduciary duties to Reed as the single largest creditor of AIA Services. Connie is also individually liable for all claims, breaches of duties, acts, omissions and/or liabilities during certain relevant times in which she was a member of the board of directors of AIA Services and AIA Insurance.

///

2.5 Duclos is, and was at certain relevant times, an officer and director of AIA Services, AIA Insurance, and Crop USA. Duclos is a shareholder in AIA Services and Crop USA. During the certain relevant times that Duclos was a director and officer of AIA Insurance and AIA Services, she owed fiduciary duties to Reed as the single largest creditor of AIA Services.

2.6 Freeman is, and was at certain relevant times, a director and/or officer of AIA Services, AIA Insurance, and Crop USA. Freeman is a shareholder in AIA Services and Crop USA. During the certain relevant times that Freeman was a director of AIA Insurance and AIA Services, he owed fiduciary duties to Reed as the single largest creditor of AIA Services.

2.7 Crop USA was formed and operated using AIA Services and AIA Insurance's assets, funds, employees, office space, trade secrets, business relationships, equipment, good will, reputation, financial wherewithal (including loan guarantees), and other assets. But for AIA Insurance's assets, trade secrets, reputation and relationships, Crop USA would never have been formed and operated. Since Crop USA's formation, funds were inappropriately loaned and/or transferred back and forth from AIA Services and/or AIA Insurance to and from Crop USA and other entities partially owned by John and/or Connie.

2.8 John and Connie own approximately 40% of Crop USA, which also remained undivided community property at the time Reed filed his original Complaint.

2.9 Beck is a shareholder in AIA Services and Crop USA and acquired Crop USA shares from the inappropriate and/or unlawful conversation of their Preferred C Shares of AIA Services to shares of Crop USA. During the certain relevant times that Beck was a member of the board of directors boards of AIA Insurance, AIA Services and/or Crop USA, he owed fiduciary duties to Reed as the single largest creditor of the corporations. During certain relevant

times, Beck was a member of the boards for Crop USA, AIA Insurance, and/or AIA Services and directed, consented, approved and/or acquiesced in inappropriate and/or unlawful corporate activities at AIA Insurance, AIA Services and/or Crop USA.

2.10 Reed was the founder and majority shareholder of AIA Services. In 1995, John desired to redeem Reed's 613,494 shares of common stock in AIA Services through a stock redemption agreement. Upon the closing of the transaction of AIA Services' redemption of Reed's shares, John became the majority shareholder in AIA Services.

2.11 AIA Insurance, a subsidiary of AIA Services, is wholly owned by AIA Services and where virtually all of AIA Services' revenues are derived and was the basis for security interests provided to Reed. AIA Insurance is lessee of the office building located at 111 Main Street, Lewiston, Idaho.

2.12 On or about July 22, 1995, AIA Services and Reed entered into a Stock Redemption Agreement, Stock Pledge Agreement, and Security Agreement. Under the terms of the Stock Redemption Agreement and related agreements, AIA Services agreed to execute promissory note to timely pay Reed \$1,500,000 Million in 90 days ("**Down Payment Note**") and \$6,000,000, plus accrued interest due and payable monthly at the rate of 8¼% per annum ("**Promissory Note**").

2.13 The Promissory Note was executed by John on behalf of AIA Services on or about August 1, 1995. Under the terms of the Promissory Note, AIA Services was required to timely pay all accrued interest monthly to Reed and the principal amount of \$6,000,000, plus all accrued but unpaid interest was due and payable on August 1, 2005. Donna Taylor, the holder of the Series A Preferred Shares in AIA Services, subordinated all of her rights to payment of the redemption of her shares in favor of Reed. Through the date of Reed's Complaint, AIA Services

had not timely and properly paid all sums owed to Donna Taylor.

2.14 Under the terms of the Stock Redemption Agreement, AIA Services and AIA Insurance also agreed to contemporaneously execute a Security Agreement and Stock Pledge Agreement, among other agreements and documents. The Stock Redemption Agreement, Stock Pledge Agreement, and Security Agreement were all either authorized by the Board of Directors of AIA Services and/or AIA Insurance and/or approved by a shareholder vote.

2.15 When AIA Services was unable to comply with the Stock Redemption Agreement, Stock Pledge Agreement, and Security Agreement, John, on behalf of AIA Services and AIA Insurance, entered into negotiations with Reed regarding restructuring the obligations. In 1996, AIA Services, AIA Insurance and Reed agreed to modify the Stock Redemption Agreement and executed the Stock Redemption Restructure Agreement ("**Restructure Agreement**"). Contemporaneously with the execution of the Restructure Agreement, the parties executed the Amended and Restated Stock Pledge Agreement ("**Amended Stock Pledge Agreement**") and Amended and Restated Security Agreement ("**Amended Security Agreement**").

2.16 Under the terms of the Restructure Agreement, the terms of the Promissory Note remained unchanged and were not modified (including the \$6,000,000 principal amount, due date, and required monthly interest payments). Under the terms of the Amended Security Agreement, Reed received a security interest in all of AIA Services and AIA Insurance's commissions and related services (and all proceeds thereof), and AIA Services and AIA Insurance were required to have a Lock Box for all commissions for the protection and benefit of Reed.

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2.17 Under the terms of the Amended Stock Pledge Agreement, AIA Services pledged all of the outstanding shares in AIA Insurance to Reed as partial security for AIA Services' indebtedness to Reed under the Promissory Note, Restructure Agreement, and Amended Security Agreement. Under the terms of the Amended Stock Pledge Agreement, AIA Services' failure to timely pay Reed interest or principal under the Promissory Note or the Down Payment Note constituted an Event of Default. In an Event of Default for failure to timely pay interest or principal under the Promissory Note, AIA Services' insolvency, or AIA Services' failure to maintain the required Lock Box (among other Events of Default), AIA Services' right to vote the pledged shares of AIA Insurance ceased and terminated and vested exclusively in Reed.

2.18 Under the terms of the Amended Stock Pledge Agreement, AIA Services and/or AIA Insurance owed Reed continuing contractual obligations, including, without limitation, the obligation that Reed was required to be a member of the board of directors of AIA Services until Reed was paid in full or sufficient security was posted to ensure the payment of the Promissory Note. AIA Services never posted bonds or other security for the payment of the Promissory Note. AIA Services, John, Duclos, Freeman, Connie, and/or Beck have intentionally refused to appoint Reed to the Board of AIA Services as required and/or unilaterally created new conditions upon which Reed's appointment would be based. A new right to be a member of the board of AIA Services is created every year as directors are required to be elected yearly under the Bylaws of AIA Services. Despite Reed's demands and AIA Services' continuing contractual obligations to keep Reed on the board of directors, AIA Services, John, Duclos, Freeman, Connie, and/or Beck have refused to appoint Reed to the Board of Directors of AIA Services as required. Because Reed has not been on the Board of AIA Services as required, all actions taken by AIA Services' board were not properly authorized and, therefore, not ratified by AIA

Services; and such acts are the personal actions of John, Duclos, Freeman, Connie, and/or Beck during their tenure on the board of AIA Services.

2.19 Under the Amended Stock Pledge Agreement, AIA Services had continuing contractual obligations to not loan money to any affiliate other than a wholly owned subsidiary. AIA Services has loaned money on countless occasions to and/or lent other services, office space or benefits to affiliates and other parties in violation of the Amended Stock Pledge Agreement, and such loans or benefits were made during times in which John, Duclos, Freeman, Connie, and/or Beck were board members of AIA Services and/or AIA Insurance. In addition, the Amended Articles of Incorporation of AIA Services prevents it or any of its subsidiaries (including, without limitation, AIA Insurance), from guaranteeing the loans of any other entity that is not a wholly owned subsidiary of AIA Services.

2.20 The Promissory Note required monthly interest payments with an acceleration clause if payments were not timely or properly made to Reed. The acceleration clause requires written notice from Reed to AIA Services of default and AIA Services would be entitled to a five day opportunity to cure before Reed could exercise his rights under the Amended Stock Pledge Agreement or Amended Security Agreement. The obligations owed to Reed under the Promissory Note are independent of any other obligations owed by the Defendants and secured by the Restructure Agreement, Amended Stock Pledge Agreement and Amended Security Agreement.

2.21 During relevant times, the fair-market value of AIA Services and AIA Insurance was less than the aggregate amount of their total debts, which constitutes AIA Services and AIA Insurance's insolvency. During relevant times, AIA Services and/or AIA Insurance were unable to pay their debts as they became due (including, without limitation, debts to Reed and Donna

Taylor), which also constitutes AIA Services insolvency and AIA Insurance's insolvency.

2.22 During all relevant times, Reed was the largest and most significant creditor of AIA Services. Because AIA Services has failed to timely and properly pay creditors as required during certain relevant times and/or was insolvent, John, Duclos, Freeman, Connie, and/or Beck owed fiduciary duties to creditors, specifically Reed because of his status as AIA Services' largest and most significant creditor.

2.23 The value of AIA Services and AIA Insurance's assets (including, without limitation, if both corporations are sold and/or their assets independently sold) at the time Reed filed his original Complaint was insufficient to pay Reed the \$6,000,000, plus prejudgment interest in excess of \$2,000,000 owed to him. The value of AIA Services and AIA Insurance's assets (including if both corporations are sold) for at least 7 years of time preceding the time Reed filed his original Complaint was insufficient to pay Reed the \$6,000,000 principal, plus prejudgment interest owed to him.

2.24 During certain relevant times, AIA Services and/or AIA Insurance were in default of various provisions of the agreements with Reed, insolvent and/or unable to timely pay its debts to Reed and/or other creditors, including Donna Taylor. During certain relevant times, AIA Services has failed to comply with the terms of the Promissory Note.

2.25 Instead of paying Reed as required, AIA Services, AIA Insurance, Crop USA, John, Duclos, Connie, Beck, and/or Freeman utilized funds that Reed had a security interest in to make investments in, transfer assets to, or loan money to, or provide services on behalf of Crop USA, John and/or entities operated and/or partially owned by John, Connie, Beck, Freeman, Duclos, and/or one or more of the other Defendants.

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2.26 On or about December 12, 2006, Reed provided AIA Services written notice of default under various provisions of the Restructure Agreement, Amended Stock Pledge Agreement, and Amended Security Agreement, including, without limitation, AIA Services' failure to pay principal and interest due under the Promissory Note, failure to maintain the Lock Box, loaning money to non-wholly owned subsidiaries (including guaranteeing the \$15 Million revolving line-of-credit for Crop USA), failure to provide all required financial information, and other defaults as set forth in the notice. AIA Services and AIA Insurance have failed to timely cure the defaults and all applicable cure periods have expired. As of the date of this Complaint, the principal owed to Reed under the Promissory Note of \$6,000,000, plus accrued interest of over \$2,000,000 had not been paid in full as required.

2.27 Prior to Reed's Notice of Default dated December 12, 2006, Reed had never accelerated any of the indebtedness due under the Promissory Note. Even though AIA Services and AIA Insurance failed to cure the defaults specifically set forth in Reed's Notice of Default dated December 12, 2006, AIA Services continued to make partial and inconsistent interest payments (including the payment of certain employees and other services on behalf of Reed) before and after the date of Reed's original Complaint. All amounts due under the Promissory Note are secured by the remedies available under the Promissory Note, Restructure Agreement, Amended Stock Pledge Agreement and Amended Security Agreement.

2.28 Despite Reed's demands, AIA Services, AIA Insurance, John, Freeman, Duclos, Connie, and/or Beck have failed to comply and/or as officers and/or directors to ensure that AIA Services and AIA Insurance complies with the obligations owed to Reed under the terms of the Promissory Note, Restructure Agreement, Amended Stock Pledge Agreement, and Amended Security Agreement. Under the Amended Stock Pledge Agreement, the right to vote all of AIA

Insurance's shares ceased and terminated for AIA Services and became vested in Reed when AIA Services failed to timely pay the required monthly interest payments due under the Promissory Note and its subsequent failure to pay the \$6,000,000 principal due under the Promissory Note on August 1, 2005 (and other breaches set forth in this Complaint). AIA Services was in default and had failed to cure such defaults before Reed demanded to exercise his right to hold a special shareholder meeting to vote the shares to appoint a new board of directors for AIA Insurance.

2.29 On December 12, 2006, Reed timely provided notice of his demand for a special shareholder meeting of AIA Insurance for the purpose of removing and appointing new board members on December 26, 2006. AIA Services, AIA Insurance, John, Duclos, and/or Freeman (and the other Defendants if applicable) refused to comply with Reed's demand for a special shareholder meeting by representing that AIA Insurance's offices were closed on December 26, 2006.

2.30 Through a letter dated January 3, 2007, John acknowledged Reed's right to call a shareholder meeting under the Amended Stock Pledge Agreement when he stated "I fully recognize that [Reed] Taylor may take actions he deems appropriate, including calling a special shareholders meeting."

2.31 On or about January 25, 2007, Reed hand delivered another demand for a special shareholder meeting for the removal and appointment of the board of directors for February 5, 2007, pursuant to his rights under the Amended Stock Pledge Agreement. Through a letter from Duclos, AIA Insurance refused Reed's request and denied that he had the right to call a meeting to vote the AIA shares. Despite Reed's demands, AIA Insurance refused to hold a special shareholder meeting.

2.32 Despite Reed's demands, AIA Services and AIA Insurance failed to cure the numerous Defaults under the terms of the Promissory Note, Restructure Agreement, Amended Stock Pledge Agreement and Amended Security Agreement, among other obligations (as described above). Through the date of this Complaint, AIA Services and AIA Insurance's Defaults were not timely cured and they remained in default of the foregoing Agreements.

2.33 On February 22, 2007, Reed exercised his right to vote the pledged shares by executing a Consent in Lieu of Special Shareholder Meeting of AIA Insurance removing John, Duclos and Freeman from the Board of Directors and appointed himself the sole Board Member, pursuant to his right to vote the pledged shares under the Amended Stock Pledge Agreement. Because AIA Services' right to vote the pledged shares had ceased and terminated when it became in Default and failed to timely cure such Defaults, the right to vote the pledged shares in AIA Insurance vested exclusively in Reed and he exercised his right to vote the pledged shares pursuant to the Amended Stock Pledge Agreement and the Articles of Incorporation of AIA Insurance. Because the shares pledged to Reed account for all the outstanding shares of AIA Insurance, Reed had the authority to waive the notice requirement, notice period, and the formality of holding a shareholder meeting as he was the only party authorized to vote any shares of AIA Insurance. Because Reed appointed himself as the sole director of AIA Insurance, he had the exclusive authority to appoint himself as the officers of AIA Insurance through a Consent in Lieu of a Board Meeting.

2.34 In the weeks leading up to the filing of this action, Reed discovered that more than one transfer of assets occurred during the time in which AIA Services had failed to service its debt to Reed. In 2004, AIA Insurance paid \$1,510,693 to purchase Series C Preferred Shares in AIA Services from Crop USA. This transaction inappropriately, unlawfully, and/or

fraudulently transferred \$1,510,693 of AIA Insurance's funds to Crop USA when such funds should have been tendered to Reed or been retained to benefit AIA Insurance. This \$1,510,693 transfer occurred at a time in which AIA Services was insolvent. This \$1,510,693 transfer also occurred at the same time that AIA Services' 401(k) Plan (the "Plan") held over \$750,000 in Preferred C Shares in AIA Services. No shares were purchased or redeemed from the Plan, even though John and Duclos were the Co-Trustees of the Plan at the time of the transfer. This transaction constitutes the fraudulent transfer of funds from AIA Insurance to Crop USA.

2.35 Reed also discovered that John and Connie had purchased a parking lot for \$8,000 and later entered into a lease agreement with AIA Services and/or AIA Insurance to lease the parking lot from John and Connie for \$1,250 per month. This transaction was also the fraudulent transfer of funds to John and Connie, when such funds should have been paid to Reed during a time in which AIA Services was unable to service its debt to Reed and was otherwise insolvent. John and Connie also inappropriately paid lump sums for rent before such inappropriate rent was due. The parking lot is not utilized by AIA Insurance or AIA Services. Such acts and/or transfers have occurred during John, Freeman, Duclos, Connie, and/or Beck's tenure as members of the boards of AIA Insurance and/or AIA Services.

2.36 Based upon the above-referenced acts, transfers and transactions, together with transactions referenced in the notes to AIA Services and/or AIA Insurance's financial statements, there are other unauthorized and inappropriate transfers, loans, payments, advances and other actions which occurred during times AIA Services defaults and inability to timely pay Reed and at times in which AIA Services was insolvent. Forensic accounting and further scrutiny of AIA Insurance and/or AIA Services' books and records will reveal additional improper, unlawful and/or fraudulent transfers, transactions and the like that directly and/or indirectly benefited the

individual Defendants, Crop USA and/or entities partially owned by John.

2.37 During times in which John, Freeman, Duclos, Connie, and/or Beck owed Reed fiduciary duties, they have used AIA Services and AIA Insurance as their personal source of funds and/or assets, including, without limitation, acts in which John has transferred assets to his name; taken advances that John never paid back; transferred assets, resources, and/or funds to Crop USA, Sound Insurance and/or other entities partially owned or controlled by John and/or the other individual Defendants; entered into transactions which constitute a violation of AIA Insurance and/or AIA Services' Articles of Incorporation; made transfers and/or entered into transactions which benefited them; and provided services for entities partially owned by them without such actions being arms-length transactions. The above acts occurred when John, Duclos, Freeman, Connie, and/or Beck were directors and/or officers of AIA Services, AIA Insurance and/or Crop USA. All of the above acts occurred during certain relevant times in which AIA Services was not current with payments of interest and/or principal owed to Reed under the Promissory Note and when AIA Services was insolvent.

2.38 On February 22, 2007 (after executing the Consent in Lieu of Special Shareholder Meeting), Reed executed a Consent in Lieu of Board Meeting to terminate all officers, terminate the employment of John, authorize the change of locks, and take such other actions deemed appropriate. When Reed attempted to take action in accordance with the Consents described above, the Defendants refused to abide by the Consents.

2.39 During certain relevant times that John, Duclos, Freeman, Connie, and/or Beck were directors of AIA Services and AIA Insurance, they failed make proper corporate governance decisions and failed to take appropriate legal action on behalf of AIA Insurance and/or AIA Services to protect Reed's interests. During the relevant times that John, Duclos,

Freeman, Connie, and/or Beck were directors and/or officers of AIA Services and AIA Insurance, they breached their fiduciary duties owed to Reed.

2.40 Sometime after filing Reed's original Complaint, Freeman and Duclos resigned as members of the board of directors of AIA Insurance and AIA Services. John, in breach of his fiduciary duties owed to Reed and in violation of Reed's right to vote the shares and prior vote of the pledge shares in AIA Insurance, appointed himself, Connie and Beck to the board of AIA Insurance. John also appointed himself, Connie and Beck to the board of AIA Services in breach of his fiduciary duties owed to Reed. These appointments were conflicts of interest and breaches of John's fiduciary duties owed to Reed and the appointed Defendants' acceptance of such appointments was a further breach of duties owed to Reed. Finally, Beck, John and Connie approved inappropriate payments to the directors of AIA Services and AIA Insurance, which such payments must all be disgorged and awarded to Reed.

2.41 During certain relevant times that John, Connie and Beck were directors of AIA Services and AIA Insurance, they failed to take appropriate legal action on behalf of AIA Insurance and AIA Services. During certain relevant times that John, Connie and Beck were directors of AIA Services and AIA Insurance, they breached their fiduciary duties owed to Reed.

2.42 Reed has a valid and perfected security interest in all commissions from sale of insurance and related services received by or on behalf of, or payable to, AIA Insurance and AIA Services, proceeds thereof and interest thereon. Reed demanded that no funds which he had a security interest in and/or which should be paid to him could be used to pay the legal fees of any of the individual Defendants. Despite Reed's demands, the Defendants have unlawfully, improperly and inappropriately diverted funds to the individual Defendants for their attorneys' fees and costs, and the Defendants have unlawfully and/or inappropriately accepted such

payments. Because all of AIA Services' revenues are derived from AIA Insurance's commissions and related services that Reed has a valid security interest in, such payments also constitute an illegal and/or unauthorized dividend from AIA Insurance to AIA Services, conversion, fraud and fraudulent conveyances.

2.43 Prior to the filing of Reed's original Complaint and without Reed's knowledge or consent, John paid a debt he owed to AIA Services in the amount of \$307,271 by transferring said indebtedness to Reed's Promissory Note. Such payment constitutes fraud (as set forth below) and John later moved the debt back to Reed's Promissory Note.

2.44 Pacific Empire Holdings Corporation d/b/a Sound Insurance has been operating through AIA Services and/or AIA Insurance and with funds, assets, rent, and/or services provided by AIA Services and/or AIA Insurance for free or at rates below fair-market-value during certain relevant times that John, Freeman, Duclos, Connie, and/or Beck owed fiduciary duties to Reed. Since the filing of Reed's Original Complaint, Crop USA purchased Sound Insurance from John and/or other unknown parties. The Defendants' operation of Sound Insurance and subsequent sale constitutes breaches of fiduciary duties, conversion, fraud and/or a fraudulent conveyance.

2.45 Global Travel was a tenant in AIA Insurance's office building located in Lewiston, Idaho. Since the filing of Reed's original Complaint, Global Travel has relocated as a tenant in an office building owned by John. Such actions are a breach of John Duclos, Freeman, Connie, and Beck's fiduciary duties owed to Reed, fraud and/or a fraudulent conveyance.

2.46 Through a letter dated February 27, 2001, John represented to Reed (individually and on behalf of the corporations) that AIA Services and/or AIA Insurance was developing a new crop insurance program through a new company called Crop USA. Reed relied on AIA

Services, AIA Insurance and John's representations that AIA Services and/or AIA Insurance were the owners of Crop USA and developing Crop USA, when AIA Services, AIA Insurance and John's representations were false in that Crop USA was never owned by AIA Insurance or AIA Services, but instead owned by John, Connie, Duclos, Beck, Freeman, and others. By John's own admission, Crop USA should have been a subsidiary of AIA Services or AIA Insurance but for certain liabilities.

2.47 John made representations to Reed and Donna Taylor that he would not be taking a salary in certain year(s). Reed relied on John's false representation when he did not accelerate payments due to him or place AIA Services in default, and in late 2006 or early 2007 learned that John had in fact taken a salary during the respective times to Reed's detriment.

2.48 John, Beck, Duclos, and/or Freeman made representations and/or omitted material facts to Reed through letters and financial statements that AIA Services and AIA Insurance were being operated for the benefit of AIA Services and AIA Insurance. AIA Services and AIA Insurance made representations and/or omitted material facts to Reed through correspondence and their financial statements that they were being operated for the benefit of AIA Insurance and AIA Services. Reed relied on John, Beck, Duclos and/or Freeman's false representations and/or omissions of material facts when in fact AIA Services and AIA Insurance were not being operated for the benefit of the corporations, but instead were being operated for the benefit of John, Freeman, Duclos, Crop USA, Sound Insurance, Beck, and other entities controlled or partially owned by John and/or Connie. As directors, Freeman, John, Duclos, and/or Beck also made the false representations and/or omitted material facts by and through the corporations' financial statements.

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2.49 John, Freeman, Duclos, and/or Beck breached their fiduciary duties owed to Reed when AIA Insurance inappropriately and/or fraudulently guaranteed a \$15,000,000 loan for Crop USA. This guarantee is also a violation of AIA Services' Amended Articles of Incorporation, AIA Services and AIA Insurance's Bylaws, and the terms of the Amended Stock Pledge Agreement. AIA Insurance received no benefit from this loan and received no consideration.

2.50 After the inappropriate and fraudulent transfer of \$1,510,693 to Crop USA described above, the wrongful transfer was misrepresented on the financial statements of AIA Insurance as an investment with a value of approximately \$1,500,000, when the "investment" was worthless. John, Duclos, Beck and/or Freeman were aware, or should have been aware, of this false fact as AIA Services was insolvent.

2.51 Reed believes that there are other acts, fraud, breaches of fiduciary duties, wrongful transfers and/or fraudulent transactions that he will itemize and detail through future amended complaints upon completion of discovery and/or at trial. By and through this paragraph, the Defendants should be placed on notice that Reed intends to recover every dollar of funds, assets, services, loans, barter and the like that were taken, utilized and/or transferred from AIA Services and/or AIA Insurance through fraud, constructive fraud, breaches of fiduciary duties, fraudulent conveyances, and any other causes of action set forth below.

2.52 The unity and commonality of the ownership, officers and/or directors of AIA Services, AIA Insurance and/or Crop USA is such that the separate personalities of the corporations and the individuals no longer exist. Equity should prevent the acts and omissions from being solely those of AIA Services, AIA Insurance and/or Crop USA. As a result of the commonality of ownership and governance, unlawful acts, conduct, omissions, fraud, failure to observe corporate governance, and breaches of fiduciary duties as set forth in this Complaint,

FIFTH AMENDED COMPLAINT – 19

AIA Insurance, AIA Services and/or Crop USA are the alter-egos of John, Duclos, Freeman, Connie, and/or Beck and such corporate veils should be pierced thereby imposing personal liability on John, Duclos, Freeman, Connie and/or Beck.

2.53 AIA Services, AIA Insurance, John, Duclos, Freeman, Connie, and/or Beck unlawfully provided Crop USA, Sound Insurance, and/or other entities with free or reduced rent, labor, funds, services, resources, and/or other assets without any and/or fair compensation to the detriment of AIA Services, AIA Insurance and Reed. John, Duclos, Freeman, Connie, and/or Beck entered into or approved transactions that were not fair for AIA Services or AIA Insurance, transactions that were not entered into in good faith, transactions that involved self-dealing, and transactions that involved any one or more of the interested individual Defendants in violation of applicable conflicts of interest procedures and/or proper corporate governance.

2.54 During certain relevant times, John utilized AIA Services, AIA Insurance and/or Crop USA as a means to pay personal bills, obtain loans, and obtain reimbursements for “alleged” expenses he incurred on behalf of AIA Services, AIA Insurance and/or Crop USA. However, many of the expenses for food, lodging and travel were inappropriately charged to AIA Services and/or AIA Insurance. This is further evidenced by the fact that John failed to remit and/or fully complete forms required by AIA Services and AIA Insurance for employees to be reimbursed.

2.55 From August 1, 1995, through the present time, John owed obligations and duties to AIA Services and Reed (including, without limitation, obligation to not compete and confidentiality) through the Executive Officer’s Agreement between John and AIA Services dated August 1, 1995. John has breached the forgoing obligations, which such breaches also constitute breaches of John, Duclos, Freeman, Connie, and/or Beck’s fiduciary duties owed to

Reed. AIA Insurance and Reed are also third party beneficiaries of John's Executive Officer's Agreement and entitled to damages from the Defendants for such breached obligations.

2.56 AIA Insurance and AIA Services could have been operated with a substantially lower number of employees than presently employed and with reduced overhead and costs. The Defendants have represented that Crop USA (and other parties) have been reimbursing AIA Services and/or AIA Insurance for all employee labor, expenses, costs, assets, and services utilized for Crop USA's benefit, when such representations are false. The Defendants have failed to disclose material facts that AIA Services and AIA Insurance employees, expenses, costs, assets, and services have also been utilized for the benefit of John, Connie, and entities partially owned by John and/or Connie without them paying AIA Services or AIA Insurance.

2.57 The Defendants have represented through board resolutions, private placement memorandum, correspondence, agreements, and/or other transactions that AIA Services and/or AIA Insurance have benefited from transactions with Crop USA (including, without limitation, Crop USA's \$15 Million line of credit and the repurchase of the Series C Preferred Shares of AIA Services), which the Defendants knew that such transactions were not beneficial to AIA Services and/or AIA Insurance. In fact, AIA Services and/or AIA Insurance did not benefit from such false representations and Reed's collateral was also impaired.

2.58 The Defendants have engaged in the improper and/or unlawful activities of utilizing AIA Services and AIA Insurance for their benefit and/or for the benefit of themselves and/or entities partially owned by one or more of the individual Defendants to the detriment of Reed.

2.59 Should any part or one or more of the following causes of action or relief be denied at or before trial, such allegations and requested relief are incorporated by reference here

to support other causes of action and/or requested relief.

III. FIRST CAUSE OF ACTION—BREACHES OF CONTRACT

3.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim and/or the relief sought under this cause of action.

3.2 The Defendants owed Reed obligations and/or continuing contractual obligations to timely pay him and comply with specific terms, conditions, covenants, warranties and the like required by the Promissory Note, Amended Stock Pledge Agreement, Amended Security Agreement, and Restructure Agreement.

3.3 AIA Services, AIA Insurance, Crop USA, John, Freeman, Duclos, Beck, and/or Connie's acts, omissions and failure to pay Reed the amounts owed and comply with continuing contractual obligations under the Promissory Note, Amended Stock Pledge Agreement, Amended Security Agreement and Restructure Agreement constitute a breach of their contractual obligations owed to Reed (whether or not any of the foregoing agreements were orally modified as alleged by the Defendants or not).

3.4 As a result of AIA Services, AIA Insurance, Crop USA, John, Freeman, Duclos, Beck, and/or Connie's acts and/or omissions which constitute breaches of their contractual obligations, Reed has suffered and is entitled to damages of \$6,000,000, plus accrued interest in an amount to be determined at trial, jointly and severally or to be allocated between the defendants as the evidence and claims show at trial. As set forth in this Complaint, the Defendants are jointly and severally liable for all claims and damages flowing from the various breaches by and through the legal theories set forth in this Complaint. In addition, Reed is entitled to an award of attorneys' fees and costs as under the Promissory Note, Amended Stock

Pledge Agreement, I.C. § 12-120 and/or I.C. § 12-121.

IV. SECOND CAUSE OF ACTION—FRAUDULENT TRANSFERS/CONVEYANCES

4.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim and/or the relief sought under this cause of action.

4.2 The Defendants' actions constitute fraudulent transfers and/or conveyances under I.C. § 55-901, *et seq.* and/or the common law doctrine of Fraudulent Transfers/Conveyances.

4.3 As a result of John, Duclos, Freeman, Connie, and/or Beck's participation, consent, approval and/or acquiescence of the fraudulent transfers and/or as direct recipients and/or indirect recipients (also by and through their ownership of shares in the recipient corporations) of the fraudulent transfers, John, Duclos, Freeman, Connie, and/or Beck are personally liable for all fraudulent transfers, plus accrued interest, in an amount to be proved at trial. All fraudulent transfers should be avoided and/or rescinded to the extent possible and/or all assets placed in a constructive trust for the benefit of Reed and such assets awarded to Reed.

4.4 John, Duclos, Freeman, Connie, Beck, and/or Crop USA and other entities controlled or partially owned by John or the Defendants are and/or were the recipients of various fraudulent transfers from AIA Services and/or AIA Insurance, and should be required to return all funds to Reed, rescind all transactions; and John, Connie, Freeman, Duclos, and/or Beck's ownership interests in Crop USA and such other entities should be placed in a constructive trust for the benefit of Reed and such shares and/or ownership awarded to him.

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V. THIRD CAUSE OF ACTION—MISREPRESENTATIONS/FRAUD
(Fraud, Constructive Fraud, and/or Shareholder, Officer Director Fraud)

5.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim and/or remedy sought under this cause of action.

5.2 AIA Services, AIA Insurance, Crop USA, Beck, Freeman, Connie, Duclos, and/or John made, ratified, acquiesced, and/or consented to statements of fact and/or omitted material statements of fact, including, without limitation, those facts and/or omissions of fact set forth in Paragraphs 2.23, 2.36, 2.44-2.49 and 2.51 above; such statements of fact were false or omitted material facts; such false statements or omitted facts were material; AIA Services, AIA Insurance, Crop USA, Beck, Freeman, Duclos, Connie and/or John knew or should have known the falsity of such statements; AIA Services, AIA Insurance Crop USA, Beck, Freeman, Duclos, and/or John intended to induce reliance; Reed was ignorant to the falsity of such statements and/or omissions; and Reed relied on such statements and/or omissions; Reed had a right to rely on such false statements and/or omissions.

5.3 By and through the Defendants' fraudulent acts and/or omissions, including, without limitation, the allegations set forth in this Complaint and as specifically alleged in Paragraphs 2.22, 2.25, 2.34, 2.35, 2.37, 2.40, 2.43-2.49, 2.53, 2.54, 2.57 and 2.58 above, AIA Services, AIA Insurance, Crop USA, John, Freeman, Duclos, Connie, and/or Beck's acts and/or omissions constitute fraud, constructive fraud (e.g., the Defendants owed Reed fiduciary duties, duties to maintain AIA Insurance's assets to protect Reed, and other duties contemplated by the parties and/or referenced in this Complaint, and the Defendants breached such duties), and/or shareholder/officer/director fraud (e.g., the siphoning off of corporate assets to the individual

Defendants' gain and to the detriment of Reed), including, without limitation, the less stringent means of proving fraud as set forth in *Smith v. Great Basin Grain Co.*, 98 Idaho 266, 561 P.2d 1299 (1977) (and other law relating to shareholder, officer and/or director fraud), and Reed is entitled to recover all damages attributable to such fraud. Under the theory discussed in *Smith v. Great Basin Grain Co.* (and other cases), AIA Services, AIA Insurance, Crop USA, John, Freeman, Duclos, Connie, and/or Beck are liable for all funds, assets, and services that were unlawfully and/or inappropriately transferred and/or utilized directly and/or indirectly to their benefit during their tenure as officers, directors, and/or shareholders in AIA Services, AIA Insurance, and/or Crop USA.

5.4 As a consequential and/or proximate result of AIA Services, AIA Insurance, Crop USA, John, Duclos, Freeman, Connie, and/or Beck's fraud (including, without limitation, any one or more of the types of fraud listed above), Reed has suffered and is entitled to recover all damages from the Defendants, jointly and severally.

VI. FOURTH CAUSE OF ACTION—CONVERSION

6.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim and/or remedy sought under this cause of action.

6.2 AIA Services, AIA Insurance, Crop USA, John, Duclos, Connie, Freeman, and/or Beck's (including, without limitation, as officers and/or members of the boards) conduct and/or consent to such conduct constitutes the willful interference with Reed's property and money which should have been paid to him or been held for his benefit (including, without limitation, money in which Reed had a valid and perfected security interest, e.g., whether through UCC filings and/or through security interests and/or rights in the Amended Stock Pledge Agreement),

without lawful justification, which deprived Reed of the possession of such money and/or property. Crop USA, John, Duclos, Freeman, Connie, Beck and/or entities controlled or partially owned by John were recipients of the converted assets, funds, labor, and/or services (including for any attorneys' fees and costs paid by AIA Services and/or AIA Insurance for any of the individual Defendants).

6.3 As a result of the AIA Services, AIA Insurance, Crop USA, John, Duclos, Freeman, Connie, and/or Beck's unlawful acts, conduct, and interference with Reed's valid and perfected security interests and other rights, Reed has been damaged and is entitled to damages proven at trial.

VII. FIFTH CAUSE OF ACTION—ALTER EGO/PIERCING CORPORATE VAIL
(A Cause of Action and/or Remedy)

7.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim under this cause of action and/or requested relief.

7.2 Reed also specifically re-alleges and incorporates Paragraph 2.52 above.

7.3 AIA Insurance, AIA Services, and Crop USA have been operated, organized and controlled, and their affairs are so conducted that they are the instrumentality, agency, and/or conduit of one another and for John, Beck, Duclos, Freeman and/or Connie to their benefit and Reed's detriment.

7.4 Because of the lack of proper corporate governance; common officers, directors, and shareholders; lack of capitalization; fraud; overreaching; breaches of good faith and fair dealing; and the other unlawful and/or inappropriate acts and/or omissions of AIA Insurance, AIA Services, Crop USA, John, Duclos, Freeman, Beck, and Connie, the corporate veils of AIA

Services, AIA Insurance and Crop USA should be pierced thereby holding AIA Services, AIA Insurance, Crop USA, John, Duclos, Freeman, Connie, and/or Beck jointly and severally liable for all of Reed's damages that lie in tort or contract (including, without limitation, the sums due under the Promissory Note) as equity requires such action.

7.5 In addition and/or in the alternative, because of the common ownership, common governance, fraud, conversion, breached duties, unlawful acts, improper acts and/or omissions of John, Duclos, Freeman, Connie, and/or Beck, the corporations AIA Services and Crop USA should be liable for all of Reed's damages under the theory of reverse piercing of the corporate veil.

VIII. SIXTH CAUSE OF ACTION—CONSTRUCTIVE TRUST
(A Cause of Action and/or as Remedies)

8.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim and/or remedy sought under this cause of action.

8.2 Reed has a valid security interest in AIA Services and/or AIA Insurance's commissions and all of the outstanding shares of AIA Insurance, among other security interests. The boards of AIA Services and AIA Insurance owed Reed fiduciary duties to Reed. AIA Services, AIA Insurance, Crop USA, John, Duclos, Freeman, Connie, and/or Beck fraudulently, wrongfully and/or improperly used funds, transferred assets and/or provided services (which should have been paid to Reed or benefited AIA Services and/or AIA Insurance) for investments, personal use, inappropriate transactions, loans, advances, self-dealing, and/or other wrongful, fraudulent and/or inappropriate purposes (including, without limitation, approving, consenting, and/or acquiescing in such activities and the failure to take appropriate action).

8.3 AIA Services, AIA Insurance, Crop USA John, Duclos, Freeman, Connie, and/or Beck's acts and/or omissions resulted in Crop USA, John, Duclos, Freeman, Connie and/or Beck's acquisition of money, securities and/or services which should have been paid to Reed or retain by AIA Insurance but for their fraud, deepening insolvency, civil conspiracy, misrepresentation(s), bad faith, self-dealing, fraudulent conveyances, breached fiduciary duties, and/or overreaching activities; and AIA Services, Crop USA, John, Duclos, Freeman, Beck and/or other entities' retention of the money, investments, securities and property would be unjust.

8.4 Reed requests the imposition of a constructive trust for his benefit to recover the proceeds of all from the Defendants' fraud, fraudulent conveyances, breaches of fiduciary duties, overreaching, conspiracy, deepening insolvency (as a remedy only), improper, self-dealing, wrongful and/or inappropriate transfers, acts and/or omissions.

IX. SEVENTH CAUSE OF ACTION—DIRECTOR LIABILITY
(A Cause of Action and/or a Remedy)

9.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim and/or remedy sought under this cause of action.

9.2 John, Duclos, Freeman, Connie, and/or Beck are personally liable for all relevant breached fiduciary duties, deepening insolvency, wrongful acts, improper acts, omissions, overreaching transactions, fraud, civil conspiracy, faithless fiduciary activities, loans, advances, improper loan guarantees and/or fraudulent conveyances which occurred during their tenure as a member of the board of directors of AIA Service, Crop USA and/or AIA Insurance.

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9.3 Because John, Duclos and Freeman were both directors and officers during certain relevant times, they owed Reed even more elevated fiduciary duties. John, Duclos, and Freeman breached their elevated fiduciary duties owed to Reed.

9.4 During the relevant times that John, Connie, Beck, Freeman and/or Duclos were members of boards of AIA Insurance, AIA Services, and/or Crop USA, they each should be held personally liable for all Reed's damages in contract and tort.

X. EIGHTH CAUSE OF ACTION—SPECIFIC PERFORMANCE
(A Cause of Action and/or as Remedies)

10.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim and/or remedy sought under this cause of action.

10.2 Under the Amended Stock Pledge Agreement, Amended Security Agreement, and Restructure Agreement, Reed is entitled to vote the pledged shares of AIA Insurance (and all ancillary rights, including, without limitation, to vote the shares to remove the board and take all actions related in any way to his right to vote the pledged shares), sell the shares of AIA Insurance at public or private sale, judicially sell the pledged shares in AIA Insurance, entitled to timely receive audited financial statements and financial information, and/or seize all of the AIA Insurance and AIA Services' commissions in the required Lock Box. When AIA Services became in Default, it lost its right to vote the pledged shares of AIA Insurance and the right vested exclusively in Reed.

10.3 Despite Reed's demands for the Defendants to comply with the provisions in the Promissory Note, Amended Stock Pledge Agreement, Amended Security Agreement and Restructure Agreement, AIA Services, AIA Insurance, the Defendants have refused to comply.

Reed is entitled to the relief afforded to him or reasonably contemplated under the foregoing agreements and such other rights, remedies and/or relief as may be available under Idaho Code, including, without limitation, any action, relief and/or order authorized under I.C. § 30-1-701 *et seq.* and/or I.C. § 28-9-101 *et seq.* (including the sale of the pledged shares, protection of security interest, seizure of security, and any other available remedy).

10.4 As a direct or proximate result of the Defendants' acts and/or omissions, Reed has suffered and is entitled to an award of attorneys' fees and costs incurred, at or before trial, in enforcing any provision of the Promissory Note, Amended Stock Pledge Agreement, Amended Security Agreement, and/or Restructure Agreement for relief sought before or at trial.

XI. NINTH CAUSE OF ACTION—BREACH OF FIDUCIARY DUTIES

11.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim and/or remedy sought under this cause of action.

11.2 During certain relevant times, John, Connie, Beck, Duclos,, and/or Freeman owes and/or owed Reed fiduciary duties, including, without limitation, because of his status as the largest creditor of AIA Services, AIA Insurance and/or Crop USA; and because AIA Services and/or AIA Insurance were insolvent as described in this Complaint. The individual Defendants' fiduciary duties include, without limitation, the duties of care and loyalty to Reed. During the relevant times that John, Freeman and Duclos acted as both a director and an officer of AIA Insurance, AIA Services and/or Crop USA, they owed even more elevated fiduciary duties to Reed as the single largest creditor of AIA Services and/or AIA Insurance.

11.3 John, Connie, Beck, Duclos, and/or Freeman breached their fiduciary duties owed to Reed, including, without limitation, when they failed to operate AIA Services and AIA

Insurance for the benefit of Reed. John, Connie, Beck, Duclos, and/or Freeman breached their fiduciary duties when they failed to take legal action against past and/or present officers and/or directors of AIA Services and AIA Insurance, and when they prevented Reed from taking any action he deemed appropriate under the Amended Stock Pledge Agreement, Amended Security Agreement and/or Restructure Agreement.

11.4 As a result of John, Connie, Beck, Duclos, and/or Freeman's breaches of their fiduciary duties owed to Reed, they are individually liable to Reed for all damages he suffered and/or deemed the product of their breached fiduciary duties, including without limitation, all damages attributable to inappropriate transfers of assets and/or services, inappropriate use of assets and/or services, inappropriate payment of salaries, the failure to pursue claims against other past and/or present officers and directors, inappropriate guarantee of loans, all claims in this Complaint, and such other wrongful acts and/or omissions that Reed may demonstrate at trial.

XII. TENTH CAUSE OF ACTION—BREACH OF IMPLIED COVENANTS OF GOOD FAITH AND FAIR DEALING

12.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim and/or remedy sought under this cause of action.

12.2 There is an implied obligation of good faith and fair dealing between the parties in the performance and enforcement of the terms and conditions of the Promissory Note, Amended Stock Pledge Agreement, Amended Security Agreement and Restructure Agreement. This duty embraces, among other things, an implied obligation that AIA Services, AIA Insurance, and their directors and officers, specifically, Defendants Duclos, Freeman, John, Connie, and/or Beck

shall not do anything to injure or destroy Reed's rights to receive the benefits of the Promissory Note, Amended Stock Pledge Agreement, Amended Security Agreement and/or Restructure Agreement. The Defendants have breached their obligations of good faith and fair dealing owed to Reed when they, among other things, intentionally injured and/or destroyed Reed rights.

12.3 As a result of the Defendants' acts and/or omissions, Reed has suffered and is entitled to damages in the amount to be proven at trial, including, without limitation, all damages incurred since the Defendants have refused to abide by the terms and conditions of the Promissory Note, Restructure Agreement, Amended Stock Pledge Agreement and/or Amended Security Agreement. In addition, Reed is entitled to recover all damages incurred after his vote of the pledged shares under because of the individual Defendants' interference with Reed's contractual rights.

XIII. ELEVENTH CAUSE OF ACTION—CIVIL CONSPIRACY
(A Cause of Action and/or Remedy)

13.1 Reed re-alleges and incorporates each and every allegation contained in other paragraphs of this Complaint necessary to support every claim and/or remedy sought under this cause of action.

13.2 AIA Services, AIA Insurance, Crop USA, John, Connie, Duclos, Freeman, and/or Beck engaged in a pattern of behavior and/or agreement to accomplish an unlawful objective and/or to accomplish a lawful objective in an unlawful manner. AIA Services, AIA Insurance, Crop USA, John, Connie, Duclos, Freeman, and/or Beck's acts, omissions, and/or acquiescence constitute civil conspiracy.

13.3 As a result of AIA Services, AIA Insurance, Crop USA, John, Connie, Duclos, Freeman, and/or Beck's wrongful and unlawful acts and/or acquiescence, they should all be held

jointly and severally liable for all of Reed's damages in this action.

XIV. PRAYER FOR RELIEF

Without waiving any claims, rights and/or remedies under any of the above-referenced agreements and/or Idaho Code as a secured party, Reed respectfully requests the following relief:

14.1 For a judgment against AIA Services for the principal of \$6,000,000, plus accrued pre-judgment interest, in the total amount to be proven at or before trial.

14.2 Reed requests a preliminary and permanent injunction against the Defendants as follows (any one or more of the following at or before trial):

- (a) Enjoining any of the Defendants from interfering with the actions taken pursuant to the February 22, 2007, Consent in Lieu of Special Meeting of Shareholders of AIA Insurance and the actions taken pursuant to the February 22, 2007, Consent in Lieu of Meeting of Board of Directors of AIA Insurance.
- (b) Enjoining any of the Defendants from preventing Reed from exercising his right under the Amended Stock Pledge Agreement to vote the pledged shares in AIA Insurance and taking any ancillary actions which relate in any way to voting the pledged shares, including, without limitation, removing the board of directors of AIA Insurance and appointing a revised board and such other actions he deems appropriate in his sole discretion as the exclusive person entitled to vote all the outstanding shares of AIA Insurance.
- (c) Requiring the Defendants to timely and promptly provide Reed with all financial information required under the Amended Stock Pledge Agreement.
- (d) Enjoining John and any of the other individual Defendants from entering the offices of AIA Insurance, if necessary

- (e) Enjoining the Defendants and any entity owned, partially owned or operated by any one or more of them from interfering with, disturbing, and transferring any of AIA Services, AIA insurance and Crop USA's customers, trade secrets, contracts, agreements and business.
- (f) Enjoining the Defendants from utilizing, transferring or disposing of any funds, assets, property, labor, facilities or services of AIA Insurance, AIA Services and/or Crop USA for any other person, entity or business, unless such transactions are arms-length and payment is received by AIA Insurance, AIA Services and/or Crop USA prior to providing such funds, assets, labor, facilities or services (e.g., no free use or credit arrangements for such activities).
- (g) Enjoining the Defendants from disposing of, using, transferring or utilizing any of the funds, assets (including, without limitation, mortgages) and/or property received from AIA Services, AIA Insurance, and/or Crop USA from the lawsuit entitled In re: Universe Liquidator Grain Growers Trust, et al. v. Idaho Department of Insurance a/k/a GGMIT suit, all other lawsuits, litigation and disputes in which AIA Services, AIA Insurance and/or Crop USA obtains any financial gain. All funds, assets and/or property from the foregoing should be held in trust until further notice from the Court.
- (h) Enjoining the Defendants from negotiating or entering into any loans, credit arrangements, credit facilities, or borrowing any funds under any loan, line-of-credit, credit facility, open account and the like for which AIA Insurance or AIA Services is a guarantor or a signatory, unless utilized for the exclusive

benefit of AIA Insurance to provide funding for AIA Insurance and approved by Reed or such other party appointed by Reed or the Court.

- (i) Enjoining the Defendants from destroying, altering, deleting, purging, and/or removing any documents (including drafts, proposals, electronic files, email, back-up media and the like), property, computers and the like from AIA Insurance, AIA Services and Crop USA's offices.
- (j) Enjoining the Defendants from advancing or lending any funds, assets or services to John, Duclos, Freeman, Connie, Beck, or AIA Services without first obtaining written consent from Reed or permission from the Court.
- (k) Enjoining the Defendants from entering into or negotiating any substantive contracts or agreements without first obtaining approval from Reed or permission from the Court.
- (l) Enjoining the Defendants from holding, calling or participating in any shareholder meetings, board meeting, and/or executing any Consents in Lieu of the foregoing without permitting Reed to vote the pledged shares or take such other action permitted to him as the holder of the right to vote all outstanding shares of AIA Insurance.
- (m) Enjoining the Defendants from using or transferring any funds, assets, or services of AIA Insurance for the purpose of providing any retainers or payments for the legal services for John, Freeman, Duclos, Connie, and/or Beck.
- (n) Enjoining John from being paid compensation for work not performed for AIA Insurance and/or AIA Services. John's time expended for Crop USA

and any other entities partially or wholly owned by him shall be paid by the appropriate entity and not AIA Insurance, AIA Services, but by the entity for which John performed the work.

- (o) Enjoining the Defendants from paying any of the members of the board of directors of AIA Services or AIA Insurance unreasonable compensation for serving on the board of directors of AIA Services or AIA Insurance.
- (p) Enjoining the Defendants requiring AIA Insurance, AIA Services and Crop USA to accurately and properly itemize every employee's daily time sheet to reflect the number of hours of work performed for AIA Services, AIA Insurance, Crop USA and any other entities or persons.
- (q) Enjoining the Defendants from such other actions as may be reasonably contemplated from this Complaint, the Amended Stock Pledge Agreement, the Amended Security Agreement, the Restructure Agreement and/or which would otherwise protect Reed's interests and to prevent further deepening of the insolvency at AIA Services.
- (r) Enjoining John, Beck, Freeman, Duclos, and/or Connie from appointing any directors for Crop USA, AIA Services and AIA Insurance.
- (s) Invalidating the appointment of Connie and Beck from the Boards of AIA Services and AIA Insurance.

14.3 Enjoining the Defendants from transferring, encumbering or otherwise disposing of any improperly and/or fraudulently obtained and/or transferred assets under I.C. § 55-916, *et seq.* and/or other applicable legal authority.

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14.4 For the imposition of a constructive trust for the benefit of Reed and awarding to Reed all shares of common and/or preferred shares in Crop USA owned and/or held by John, Connie, Freeman, Duclos, and Beck and for all ancillary actions necessary to transfer said shares to Reed.

14.5 For the imposition of a constructive trust for the benefit of Reed and awarding to Reed that certain real property located in Nez Perce County and owed by John and Connie that was purchased from the Camas Praire RailNet, Inc., recorded under instrument number 672508 in Nez Perce County and all rental proceeds paid from AIA Services and/or AIA Insurance to John and Connie.

14.6 For a prejudgment writ of attachment against certain assets, funds and/or property of AIA Services, AIA Insurance, Crop USA and any other assets, funds and/or property of any of the other Defendants shown to be the proceeds or result of any or all of the Defendants' wrongful, unlawful, fraudulent and/or inappropriate acts and/or omissions.

14.7 For an order and/or judgment permitting Reed to sell the pledged shares of AIA Insurance at public or private sale or, in the alternative, judicially. In the event the pledged shares of AIA Insurance are sold (whether or not Reed is the high bidder), for a deficiency judgment against the Defendants for all amounts exceeding the amount received and/or credited from the sale, including, without limitation, all damages, attorneys' fees and costs incurred by Reed in this action. In the event Reed elects to purchase or otherwise obtain the shares of AIA Insurance, he hereby requests that only relief necessary for him to carry out his rights as owner of the shares of AIA Insurance.

14.8 For a judgment against the Defendants and/or the \$200,000 bond posted for the preliminary injunction against Reed for all damages, attorneys' fees, costs and expenses incurred

by Reed from being wrongfully enjoined, plus judgment against the Defendants for all amounts exceeding the \$200,000 bond.

14.9 For judgment against the Defendants, jointly and severally, for all damages incurred by Reed as a result of the Defendants' breaches of implied duties of good faith and fair dealing, conversion, deepening insolvency, breaches of fiduciary duties and other claims, including, without limitation, pre and post filing damages that include, but are not limited to: all pay to present directors and officers, damages for the compensation and benefits paid to all employees paid by AIA Services or AIA Insurance that would not have been needed, lost tenants, misuse of assets and labor, and all other items detailed at trial.

14.10 For an order compelling an audit of AIA Services, AIA Insurance and Crop USA.

14.11 For a declaratory judgment or order requiring specific performance of AIA Services and/or AIA Insurance's obligations, covenants, warranties and/or other rights granted to Reed under the Amended Stock Pledge Agreement, Amended Security Agreement, Promissory Note and/or Restructure Agreement.

14.12 For judgment that AIA Insurance, AIA Services and Crop USA have been operated as the alter-egos of John, Duclos, Freeman, Connie and/or Beck, and their corporate veils should be pierced thereby imposing personal liability on all of the individual and corporate Defendants, jointly and severally, for all of Reed's damages and sums owed to him under the Promissory Note in an amount to be proven at trial.

14.13 For judgment that Crop USA is the alter-ego of AIA Insurance and AIA Services and all the foregoing corporations for all of Reed's damages and sums owed to him in both contract and tort in an amount to be proven at trial.

14.14 For a declaratory judgment and/or order enforcing the February 22, 2007, Consent

in Lieu of Special Meeting of Shareholders of AIA Insurance and the actions taken pursuant to the February 22, 2007, Consent in Lieu of Meeting of Board of Directors of AIA Insurance.

14.15 For a judgment for damages and attorneys' fees incurred by Reed as a result of being wrongfully enjoined by the Defendants.

14.16 For such other relief that Reed may request before or at trial to enforce his rights under the Amended Stock Pledge Agreement, Amended Security Agreement, and/or Restructure Agreement, including, without limitation, any action or order authorized under I.C. § 30-1-701 *et seq.* and/or I.C. § 28-9-101 *et seq.*

14.17 For judgment, order and/or declaratory relief as may be necessary for Reed to effectuate any and all rights and remedies under I.C. § 28-9-101 *et seq.*, including, without limitation, the sale of the pledged shares, protection of security interest, seizure of security, return of funds protected by his security interest (e.g., attorneys fees paid for individual directors, etc.) and any other available remedy.

14.18 For the avoidance/rescission of the improper and/or fraudulent transactions, transfers of funds, assets and/or services from AIA Services and/or AIA Insurance to John, Beck, Freeman, Connie, Duclos, Crop USA, and any entity partially owned by John, and/or any other party who received such transfers under I.C. § 55-916, *et seq.* and/or other applicable legal authority.

14.19 For judgment against John and Connie for \$307,271, plus accrued interest, for the money he owed AIA Services which was improperly paid by inappropriately transferring his indebtedness to Reed's Promissory Note and then backing out the transaction in 2006 or 2007, and awarding this account receivable from AIA Services to Reed.

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14.20 For judgment against Connie to the fullest extent of her liability by virtue of her marriage to John and/or his acts during their marriage, and her interest in the community property in an amount to be proven at the time of trial, plus prejudgment interest.

14.21 For judgment against Connie individually for an amount to be proven at trial, plus pre-judgment interest.

14.22 For a judgment against John (both individually and through his marriage to Connie) in an amount to be proven at trial, plus prejudgment interest.

14.23 For judgment against John, Connie, Duclos, Freeman, and Beck, jointly and severally, for all funds, assets, services, property and/or any other benefit fraudulently transferred, converted and/or fraudulently conveyed, and which such transferred thing of value may not be avoided, rescinded and/or paid to Reed.

14.24 For judgment against Crop USA for all sums and the fair market value of all services, labor, funds, and assets wrongfully, fraudulently, and/or inappropriately transferred, converted and/or conveyed, directly or indirectly, from AIA Insurance and/or AIA Services.

14.25 For judgment against John, Duclos, Connie, Freeman, and Beck, jointly and severally, for amounts owed to Reed in an amount to be proven at the time of trial because AIA Services and AIA Insurance are alter egos of John, Duclos, Freeman, and Beck.

14.26 For judgment against John, Connie, Duclos, Freeman, and Beck disgorging all salaries, compensation (including payments of fees for being board members and/or advisory board members), benefits, assets, stock (including, without limitation, shares held directly or indirectly in Crop USA) and other ill-gotten gains as a result of the breaches of their fiduciary duties, fraudulent transfers, unlawful acts, fraud and/or other causes of action.

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14.27 For the imposition of a constructive trust for the benefit of Reed and awarding to Reed all funds, investments, loans, advances, securities, property, transactions, services and/or self-dealing which were converted or fraudulently, wrongfully, unlawfully and/or improperly made for the benefit of Duclos, Freeman, John, Beck, Connie and/or other parties or entities controlled and/or partially owned by any of them as may be requested at trial.

14.28 For the imposition of a constructive trust for the benefit of Reed and awarding to Reed all securities, stock, options and the like transferred, together with all proceeds thereof, converted, sold or awarded or acquired by John and/or Connie from AIA Services, AIA Insurance and/or Crop USA, including, without limitation, shares (and proceeds thereof) and/or funds, and/or distributions received in or from Pacific Empire Holdings Corporation, Pacific Empire Radio Corporation, and Pacific Empire Communications Corporation.

14.29 For the imposition of a constructive trust for the benefit of Reed and awarding to Reed all shares and options of AIA Services and Crop USA acquired by the Defendants during their employment and/or when they were officers and/or members of the boards of AIA Insurance, AIA Services, and/or Crop USA.

14.30 For the disgorgement of all salary, bonuses, compensation (including all compensation and benefits received as directors), stock options, benefits, reimbursements (all proper, improper and/or undocumented reimbursements for travel, meals, lodging, etc.) and any other payments and/or assets received by John, Connie, Beck, Duclos, and Freeman and award all such funds and assets to Reed.

14.31 For a judgment against John, Freeman, Duclos, Connie and Beck, jointly and severally, for all damages resulting from the breaches of their fiduciary duties owed to Reed during the periods of time of their relevant tenures as directors of AIA Insurance and AIA

Services, in an amount to be proven at trial.

14.32 For a declaratory judgment imposing personal liability on the individual Defendants and Crop USA for all loans guaranteed by AIA Services or AIA Insurance.

14.33 For an award of Reed's attorneys' fees and costs from all of the Defendants, jointly and severally, under the Promissory Note, Amended Stock Pledge Agreement, I.C. § 12-120, I.C. § 12-121 and/or as may be available under equity and law.

14.34 For judgment against the Defendants, jointly and severally, for all damages in tort and contract proven by Reed at trial based upon one or more of the following: civil conspiracy, fraud (any type, including misrepresentations), fraudulent conveyances, conversion, breaches of contract, alter-ego, breaches of fiduciary duties, deepening insolvency, breaches of implied duties of good faith and fair dealing, specific performance of any of Reed's rights under contract or law.

14.35 John, Connie, Beck, Duclos, and Freeman's wrongful, self-serving, fraudulent, deepening insolvency, conspiracy, inappropriate and unlawful acts and/or omissions as described in this Complaint constitute that of "faithless fiduciaries." Accordingly, all salary, compensation (including all compensation and benefits received as directors), stock options, benefits, reimbursements (all proper, improper and/or undocumented reimbursements for travel, meals, lodging, etc.) and any other payments and/or assets received by John, Connie, Beck, Duclos, and/or Freeman should be disgorged and awarded to Reed.

14.36 AIA Services and AIA Insurance have alleged that Reed agreed to orally modify the terms of the Promissory Note, Amended Stock Pledge Agreement, Amended Security Agreement and Restructure Agreement, which such allegations Reed expressly denies. If the Defendants are able to prove that such an oral modification exists at or before trial, AIA

Services, AIA Insurance and Crop USA are in breach of such orally modified agreements and Reed is entitled to the damages and relief set forth in this Complaint.

14.37 Reed incorporates by reference into this Section all allegations and requested relief set forth in the above causes of action and/or remedies. Should any of the causes of action fail at or before trial, all of such allegations are incorporated by reference into this Section as requested relief and/or as support for Reed's requested relief.

14.38 Reed expressly reserves the right to amend this Complaint upon the completion of discovery and/or present causes of action and remedies which conform to the evidence at the time of trial.

14.39 For judgment against the Defendants and/or such relief for all claims and causes of action which conform to the evidence obtained through discovery and/or forensic accounting.

14.40 For such other relief as Reed may request before or at the time of trial and/or that the Court may find just, equitable, or warranted before or at the time of trial.

14.41 The Defendants are placed on notice that future amendments to this Complaint will be likely and Reed reserves the right to do so, particularly based upon the Defendants' intentional refusal to respond to Reed's discovery requests.

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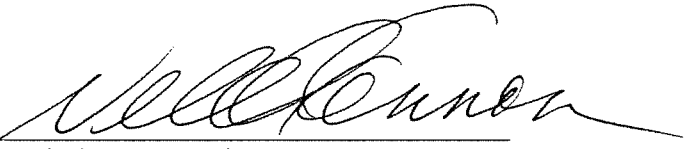
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14.42 The Defendants are placed on notice that Reed may likely move the Court in the future to permit him to request an award of punitive damages against the Defendants at trial.

DATED this 1st day of February, 2008.

SMITH, CANNON & BOND PLLC

By: 
Roderick C. Bond
Ned A. Cannon
Attorneys for Plaintiff Reed J. Taylor

CERTIFICATE OF SERVICE

I, Roderick C. Bond, declare that, on the date indicated below, I served a true and correct copy of Plaintiff Reed Taylor's Fifth Amended Complaint on the following parties via the methods indicated below:

David A. Gittins
Law Office of David A. Gittins
P.O. Box 191
Clarkston, WA 99403
Attorney for Defendants JoLee Duclos and
Bryan Freeman

Via:

- ☐ U.S. Mail, Postage Prepaid
- ☒ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

Michael E. McNichols
Clements Brown & McNichols
321 13th Street
Lewiston, ID 83501
Attorney for R. John Taylor

Via:

- ☐ U.S. Mail, Postage Prepaid
- ☒ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email (pdf attachment)

Jonathan D. Hally
Clark & Feeney
P.O. Box 285
Lewiston, ID 83501
Attorney for Connie Taylor, James Beck and
Corrine Beck

Via:

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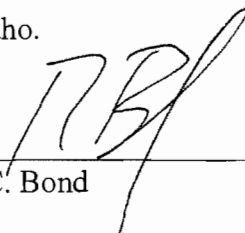
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Signed this 1st day of February, 2008, at Lewiston, Idaho.



Roderick C. Bond

FILED

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PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an
Idaho corporation; R. JOHN TAYLOR and
CONNIE TAYLOR, individually and the
community property comprised thereof,
BRIAN FREEMAN, a single person; and
JOLEE DUCLOS, a single person; CROP
USA INSURANCE AGENCY, INC., an
Idaho corporation; and JAMES BECK and
CORRINE BECK, individually and in the
community property comprised thereof;

Defendants.

CASE NO. CV07-00208

OPINION AND ORDER ON
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
AND MOTION FOR INJUNCTION

This matter is before the Court on Plaintiff's Motion for Partial Summary Judgment and Motion for Injunction. A hearing on the motions was held December 13, 2007. Plaintiff Reed Taylor was represented by attorneys Ned Cannon and Roderick C. Bond. Defendants AIA

Services Corporation and AIA Insurance, Inc. were represented by attorneys Gary D. Babbitt and D. John Ashby. Defendant R. John Taylor was represented by attorney Michael E. McNichols. Defendant Connie Taylor was represented by attorney Jonathan D. Hally. The Court, having read the motions, briefs, and affidavits submitted by the parties, having heard oral arguments of counsel and being fully advised in the matter, hereby renders its decision.

FACTUAL BACKGROUND

Defendant AIA Insurance is a business founded by Plaintiff Reed Taylor operating under the umbrella of Defendant AIA Services Corporation. The Plaintiff's brother, Defendant R. John Taylor, eventually joined the business and together, the brothers developed the parent company into a holding for numerous diversified insurance businesses. In 1995, Plaintiff Reed Taylor decided to retire. In order to effectuate his retirement, Reed Taylor and AIA Services, along with counsel for the respective parties, entered into a stock redemption agreement. The agreement included a Promissory Note payable to Reed Taylor in the amount of \$6,000,000.00 plus interest, which was executed on August 1, 1995.¹ In 1996, the agreement was amended² after Reed Taylor placed AIA on notice that it was in default of several terms of the original

¹ Plaintiff's Exhibit A, admitted into the record on March 1, 2007.

² Plaintiff's Exhibit C and Exhibit E, admitted into the record on March 1, 2007. The 1996 Stock Redemption Restructure Agreement states in ¶ D that Notices of Default were presented to AIA for its (a) failure to pay a \$1,500,000.00 Down Payment Note as due October 21, 1995, (b) failure to pay interest amounts on the \$6 million Promissory Note, (c) failure to provide required financial information to Creditor Reed Taylor, (d) failure to pay Creditor Reed Taylor's attorneys' fees, (e) failure to comply with terms of the Security Agreement in regard a commission collateral account, and (f) failure to pay funds relative to certain stocks held by Creditor Reed Taylor. The 1996 Stock Redemption Restructure Agreement states in ¶ E that as a result of the various defaults, the parties were agreed to make the following adjustments to the agreement: (a) adjust the principal amount of the Down Payment Note, extend its maturity date, provide for interest to accrue on the principal, require monthly payments of principal and interest, and provide security for the Down Payment Note; (b) terminate a Consulting Agreement that was a term of the original agreement, revise a Noncompetition Agreement that was a term of the original agreement, and terminate AIA's obligation to pay Creditor Reed Taylor a monthly salary as was a term of the original agreement; (c) amend terms of the Security Agreement and the Stock Pledge Agreement; (d) revise certain representations, warranties and covenants contained in the original Stock Redemption Agreement; and (e) simplify and consolidate various default provisions and remedies in the agreements.

agreement. Under the terms of the amended and restated agreements, the date for full payment of the \$6 million Promissory Note remained August 1, 2005, though certain interim payments relative to the Note were restructured. The Note was not paid on the due date and, as of the date of this writing, remains outstanding.

In a letter dated December 12, 2006, Plaintiff Reed Taylor's attorney notified Defendants AIA and John Taylor that AIA was in default under several sections of the Amended Stock Pledge Agreement, including but not limited to failure to pay the \$6 million Promissory Note.³ The letter further notified the Defendants that Plaintiff intended to exercise his right to vote the redeemed shares pursuant to a reversion of voting rights upon default as provided for in the Pledge Agreement. Included in the letter was Plaintiff's demand for a special shareholders meeting for the purpose of electing a new board of directors. Plaintiff's demand for a December 26, 2006 special shareholder's meeting was rejected. On January 29, 2007, Plaintiff Reed Taylor filed the above-entitled action seeking recovery of amounts owed under the Promissory Note⁴. Since the bringing of his action, Plaintiff has amended his Complaint several times, adding defendants and causes of action. The record currently contains Plaintiff's Fifth Amended Complaint.

During a motion hearing on March 1, 2007, the Court heard testimony from Plaintiff Reed Taylor and from Defendant John Taylor. Defendant John Taylor conceded in his testimony that the Promissory Note had originally been due August 1, 2005, but had not been paid.⁵ However, Defendant John Taylor asserted he and Plaintiff Reed Taylor reached an oral agreement in March 2003 that eliminated a date certain for payment of the Note.⁶ The terms of

³ Plaintiff's Exhibit F, admitted into the record on March 1, 2007.

⁴ Plaintiff's Complaint asserted claims for breach of contract and constructive trust.

⁵ Hrg. Tr. p.68, Exh. B to the Aff. of Paul R. Cressman, Jr. filed November 15, 2007.

⁶ Hrg. Tr. p.67, Exh. B to the Aff. of Paul R. Cressman, Jr. filed November 15, 2007.

payment, according to Defendant John Taylor, were that Reed Taylor would be paid the principal and all unpaid and accrued interest if and when AIA and CropUSA⁷ reached certain financial goals. Defendant Taylor further testified that in the interim, Reed Taylor was to receive set monthly interest payments of \$25,000.00, distributed as \$15,000.00 per month to Reed Taylor and \$10,000.00 per month in payments to Reed Taylor's employee.⁸ John Taylor, however, conceded that in March 2006, AIA failed to pay \$15,000.00 of the \$25,000.00 monthly payment and the shortage remained unpaid at the time of hearing. The shortage was paid several months later, in December 2007.⁹

The deposition of Defendant John Taylor was taken on August 29, 2007. Portions of that deposition were filed as Exhibit "A" to the Affidavit of Paul R. Cressman, Jr. in Support of Motion for Partial Summary Judgment on the Promissory Note.¹⁰ In his deposition, Defendant John Taylor testified that he and Plaintiff Reed Taylor agreed in March 2003 that the Promissory Note would not be paid until such time that AIA and Crop USA were economically viable, a term defined by Defendant John Taylor as having sufficient assets or borrowing power to pay the Note.¹¹ Defendant John Taylor further stated that the benefit received by Plaintiff Reed Taylor for entering into the oral modification was "reinstatement" of monthly interest payments. The "reinstatement" of interest payments was at a significantly reduced amount. Rather than the approximately \$41,000.00 monthly interest payment due under the written agreement, Reed

⁷ CropUSA is a separate entity engaged in the crop insurance business under the AIA Services Corporation umbrella.

⁸ Hrg. Tr. p.70, Exh. B to the Aff. of Paul R. Cressman, Jr. filed November 15, 2007. Under the original terms of the agreement, Reed Taylor was to be paid all of the monthly interest, an amount in excess of \$40,000.00 per month.

⁹ Hr. Tr. pp. 121-122, Exh. A to the Affidavit of Roderick C. Bond filed March 26, 2007. The shortage was subsequently paid to Reed Taylor on December 3, 2007, some nine months after John Taylor testified to the nonpayment. See Aff. of Cori Cleveland filed December 3, 2007.

¹⁰ Filed November 15, 2007.

¹¹ Depo. of John Taylor at pp. 85-86, Exh. "A" to the Aff. of Paul R. Cressman, Jr. filed November 15, 2007.

Taylor was to receive \$25,000.00 per month, \$10,000.00 of which was to be paid to the Plaintiff's pilot and ranch hand.¹²

During his testimony, Defendant Taylor was asked if he presented the oral modification to the boards of directors for AIA and/or Crop USA, and he responded he had not. Nevertheless, John Taylor insisted the board members of both companies knew Plaintiff Reed Taylor was being paid \$25,000.00 per month though Defendant John Taylor was unable to state how the board members of AIA and Crop USA received the information.¹³ Plaintiff Reed Taylor, who testified at the March 1, 2007 hearing, has at all times maintained he at no time agreed to orally modify the 1996 agreements and/or the \$6 million Promissory Note.¹⁴

On November 15, 2007, Plaintiff Reed Taylor filed a Motion for Partial Summary Judgment on the Promissory Note along with supportive briefing and affidavits. In response, Defendants filed briefs and affidavits. On November 29, 2007, Plaintiff Reed Taylor filed a Motion and Memorandum of Law for Preliminary Injunction along with supportive affidavits. Briefs and affidavits in objection were filed by Defendant AIA. On December 13, 2007, the Court heard oral arguments on the two motions.

(I) PROMISSORY NOTE

STANDARD OF REVIEW

"Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court, read in a light most favorable to the nonmoving party, demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law." *Thomson*, 137 Idaho at 476, 50 P.3d at 491; *see also* I.R.C.P. 56(c); *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988). In determining whether the record presents an issue of material fact, "all allegations of fact in the record, and all reasonable

¹² Depo. of John Taylor at pp. 86-87, Exh. "A" to the Aff. of Paul R. Cressman, Jr. filed November 15, 2007

¹³ Depo. of John Taylor at pp. 87-89, 99 & 165, Exh. "A" of the Aff. to Paul R. Cressman, Jr. filed Nov. 15, 2007

¹⁴ Hr. Tr. pp. 159-160, Exh. A to the Affidavit of Roderick C. Bond filed March 26, 2007.

inferences from the record are construed in the light most favorable to the party opposing the motion." *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 243, 16 P.3d 915, 919 (2000).

The burden of proving the absence of material facts is upon the moving party. *Thomson*, 137 Idaho at 476, 50 P.3d at 491; *see also Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 452 P.2d 362 (1969). The adverse party, however, "may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(e). The moving party is therefore entitled to a judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial. *See Thomson*, 137 Idaho at 476, 50 P.3d at 491; *Badell*, 115 Idaho at 102, 765 P.2d at 127.

Moreland v. Adams, 143 Idaho 687, 688-689, 152 P.3d 558 (2006).

"Creating only a slight doubt as to the facts will not defeat a summary judgment motion; a summary judgment will be granted whenever on the basis of the evidence before the court a directed verdict would be warranted or whenever reasonable minds could not disagree as to the facts." *Snake River Equipment Co. v. Christensen*, 107 Idaho 541, 549, 691 P.2d 787 (Ct.App.1984).

ANALYSIS

The question of whether AIA has defaulted on the Promissory Note requires a layered analysis. The parties concede the Note is in default under the 1996 written terms of the agreement. However, the Court must determine whether there was an enforceable oral modification. If so, then the Court must determine whether the Note is in default under the terms of that oral modification.

(1) DEFAULT UNDER THE WRITTEN PROMISSORY NOTE LANGUAGE

Defendant AIA does not dispute that, under the 1996 written terms of the agreement and the language in the Promissory Note, all principal and accrued interest on the Note was due in full on August 1, 2005. In addition, Defendant AIA does not dispute Plaintiff's claim that the Note was not paid in full on August 1, 2005. Rather, Defendant contends the terms relative to payment of the Note were orally modified in March 2003 as the culmination of nearly three years of negotiations between Plaintiff Reed Taylor and Defendant John Taylor.

(2) LEGAL SUFFICIENCY OF THE ALLEGED ORAL MODIFICATION

Assuming, *arguendo*, there was an oral modification of the payment terms of the Note, the Court must determine whether the oral modification as alleged sufficiently meets the requirements to form a legally enforceable contract. The integrated agreement between AIA and Reed Taylor clearly requires all amendments, modifications, waivers and/or supplementations to the agreement be placed in a writing and be signed by the parties to the agreement. The 1996 amended and restated Agreement includes the following language:

This Agreement is made to secure the punctual payment and performance by Pledgor of any and all obligations, liabilities and amounts now or hereafter owing, due or not due, direct or indirect, liquidated or contingent, to Secured Party pursuant to the Amended Down Payment Note and the \$6M Note and the prompt observance and performance by Pledgor or its covenants, agreements and obligations hereunder (collectively, the "Secured Obligations").

¶1 of the Amended and Restated Stock Pledge Agreement.

This Agreement amends, restates, supersedes and replaces the Stock Pledge Agreement which shall hereafter have no further force or effect. This Agreement and the other Restructured Obligations contain the complete and final expression of the entire agreement of the parties. No provision of this Agreement may be amended, modified, waived, or supplemented, except by a writing signed by the parties to this Agreement. No waiver by Secured Party of any default shall be a waiver of any other default.

¶ 11.3 of the Amended and Restated Stock Pledge Agreement.

Nearly identical language appears in the 1996 Amended and Restated Security Agreement.

This Agreement and the other Restructured Obligations entered into in connection with the Secured Obligations contain the complete and final expression of the entire agreement of the parties. No provision of this Agreement may be amended, modified, waived or supplemented, except by a writing signed by the party sought to be charged with the amendment, modification, waiver or supplementation.

¶ 7.2 of the Amended and Restated Security Agreement.

Despite the unambiguous language requiring all modifications be placed in writing (as was done in 1996), Defendants AIA and John Taylor contend an oral modification of material terms of the Promissory Note was entered into in March 2003 between Reed Taylor and John Taylor, acting as the agent of AIA. "It is the general common law rule in this country that an oral modification of a written contract may be enforceable, notwithstanding a clause prohibiting unwritten modifications, at least in circumstances where one party has relied upon the modification." *Rule v. U.S. Bank National Association*, 133 Idaho 669, 675, 991 P.2d 857 (Ct.App.1999).

In order for a modification to be enforceable, whether an oral or written modification, the elements necessary to the formation of a valid contract must be met. "A valid modification of a contract must satisfy all the criteria essential for a valid original contract, including offer, acceptance, and consideration." 17A Am.Jur.2d Contracts § 507 (2007); *Caffrey Farms, Inc. v. Williams Pipe Line Co.*, 739 F.2d 1366 (8th Cir. 1984); *Nyhus v. Travel Management Corp.*, 466 F.2d 440 (D.C. Cir. 1972); *Carlson, Collins, Gordon and Bold v. Banducci*, 257 Cal. App. 2d 212, 64 Cal. Rptr. 915 (1st Dist. 1967); *Anderton v. Business Aircraft, Inc.*, 650 So. 2d 473 (Miss. 1995); *Zumwinkel v. Leggett*, 345 S.W.2d 89 (Mo. 1961); *Joel T. Cheatham, Inc. v. Hall*,

64 N.C. App. 678, 308 S.E.2d 457 (1983); *Sauner v. Public Service Authority of South Carolina*, 354 S.C. 397, 581 S.E.2d 161 (2003).

When the modification is one to extend the time for payment on a promissory note, as is asserted to have occurred in the instant matter, “the time to which payment is extended must be as definite as is required in a promissory note when originally made.” 10 C.J.S. Bills and Notes § 110 (2007). Defendant AIA contends all the elements required to create an enforceable contract were met when the oral modification was entered into and that there is sufficient certainty to the term setting forth when the Note would be paid to find the oral agreement enforceable. The Court, however, finds the alleged oral agreement of modification lacks consideration¹⁵ and certainty and, therefore, fails as a matter of law.

Defendant AIA contends the element of consideration was met in the oral modification when, in exchange for Reed Taylor agreeing to extend the time for payment of the Note, Reed would receive \$25,000.00 of each months interest rather than the approximately \$40,000.00 per month interest he was to be paid under the written terms of the agreement. “The promise of a payment of a debt already due is not sufficient consideration for the promise of a creditor to forbear or extend the time of payment.” *O'Brien v. General Motors Acceptance Corp.*, 362 P.2d 455 (Wyo.1961).

An essential element of a contract is legal consideration. *Detroit Trust Co. v. Struggles*, 289 Mich. 595, 599, 286 N.W. 844 (1939). Under the preexisting duty rule, it is well settled that doing what one is legally bound to do is not consideration for a new promise. *Puett v. Walker*, 332 Mich. 117, 122, 50 N.W.2d 740 (1952). This rule bars the modification of an existing contractual relationship when the purported consideration for the modification consists of the

¹⁵ Plaintiff Reed Taylor argues the agreement to modify fails for lack of consideration and lack of mutuality of obligation. “‘Mutuality of obligation’ is simply another way of expressing the idea that there must be adequate consideration in the formation of a contract. 1 S. WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 105A (3rd ed. 1957); J. CALAMARI AND J. PERILLO, THE LAW OF CONTRACTS, § 4-14 (2nd ed. 1977); RESTATEMENT (SECOND) OF CONTRACTS § 79 (1981). *Doughty v. Idaho Frozen Foods Corp.*, 112 Idaho 791, 794, 736 P.2d 460 (Ct.App.1987).

performance or promise to perform that which one party was already required to do under the terms of the existing agreement. *Borg-Warner Acceptance Corp. v. Dep't of State*, 433 Mich. 16, 22, n. 3, 444 N.W.2d 786 (1989).

Yerkovich v. AAA, 610 N.W.2d 542, 546 (Mich.2000).

Under the terms of the written agreement, Reed Taylor promised to relinquish all of his AIA voting shares to AIA and, as consideration for his promise, AIA gave Reed Taylor a \$6 million Promissory Note that obligated AIA to pay Reed Taylor approximately \$41,000.00 interest monthly and to pay all of the principal and accrued interest on August 1, 2005. Under the alleged 2003 modification, Reed Taylor promised to extend the time for payment of the principal and accrued interest on the Note to a date completely uncertain and, in consideration of his promise, AIA was obligated to pay Reed Taylor approximately half of each months interest on the Note with payment of the principal and accrued interest to be paid when and if AIA and CropUSA reached certain financial goals.

The alleged oral modification provided Defendant AIA with multiple benefits. First, AIA was no longer obligated to pay the Note on a date certain. Second, AIA's obligation to pay the Note would only be triggered *if* AIA and CropUSA, an entity that had no obligation on the Note, reached certain financial goals. Reed Taylor, on the other hand, received no benefit from the terms of the alleged oral modification. Other than that consideration already owed to Reed Taylor under the written terms of the Note, he received no consideration in exchange for the benefits his promise provided AIA. To the contrary, he suffered detriment. The monthly interest payments Reed Taylor was to receive were reduced substantially. In addition, there was no certainty as to when, or if, Reed Taylor would be paid the \$6 million in principal plus any accrued interest. While the Court was unable to find any discussion of the preexisting duty rule in Idaho case law, the Court did find jurisdiction after jurisdiction that acknowledged the rule as

one well established in American jurisprudence.¹⁶ Applying the preexisting duty rule to the case at hand, the Court finds the 2003 oral modification of the agreement between AIA and Reed Taylor fails as a matter of law for lack of consideration.

The Court also finds the oral modification fails as a matter of law for lack of certainty. As was noted by Defendant AIA in its brief in opposition to Plaintiff's motion for partial summary judgment, in order for an extension of time to be binding, the new time for payment must have the same certainty as existed in the original promissory note.¹⁷ "For an extension of the payment of a note to be binding on the parties, it must be for a definite period and must be supported by consideration." *Mitchell v. Peterson*, 422 N.E.2d 1026, 97 Ill.App.3d 363 (Ill.App.1981). "Granting that the time of payment may be extended by a definite and binding oral agreement (*Oliver v. U.S. Fidelity Co.*, 176 N.C. 598, 97 S.E. 490), we are confronted by the general rule that such an agreement must fix a definite time when payment is to be made. The time thus agreed on should be as definite as that which is required when the note is originally executed; the elements of the agreement being certainty, mutuality, and consideration." *Wrenn v. Lawrence Cotton Mills, Inc.*, 150 S.E. 676, 678, 198 N.C. 89 (N.C.1929). While some courts have stated that the rule does not require a precise date to be fixed for the agreement to be valid, those courts have, nonetheless, held that that the time must be readily ascertainable by an event that is certain to occur and not one that is contingent. *West Texas Loan Co. v. Montgomery*, 200 P. 681, 27N.M. 296 (N.M.1921).

¹⁶ Jurisdictions that were reviewed include Alabama, Arizona, California, Florida, Georgia, Indiana, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Vermont, Washington, and West Virginia.

¹⁷ "In order for an extension of time to be binding, the time to which payment is extended must be as definite as is required in a promissory note when originally made." 10 C.J.S. Bills and Notes § 110. "[F]or an extension of time for payment of a note to be binding on the parties, it must be for a definite period of time." 11 Am.Jur.2d Bills and Notes § 198.

The Promissory Note¹⁸ in the instant matter is dated August 1, 1995 and reads in relevant part:

Payments of interest only shall be made monthly in lawful money of the United States in immediately available funds commencing one month from the date hereof at the address of Payee to which notices are to be sent pursuant to the terms of the Redemption Agreement, or at such other place as the holder hereof shall designate in writing. The entire balance of all principal and any accrued but unpaid interest shall be due and payable on the tenth anniversary of the date of this Note.

Under the original terms of the Promissory Note, the time for payment of the principal and accrued interest was a date certain – the tenth anniversary of the date of the Note, i.e. August 1, 2005. Under the terms of the alleged oral modification, there is no certainty to the term for payment of the Note, since it was payable upon an entirely contingent event rather than an event that was certain to occur. It was the testimony of Defendant John Taylor during the March 1, 2007 hearing that, under the terms of the oral modification, the Note would become due when AIA and CropUSA reached sixty to seventy million dollars in new premiums.¹⁹ When his deposition was taken, Defendant John Taylor testified that, under the terms of the oral modification, the Note would be due when AIA and CropUSA achieved sixty million in new premiums in a single year.²⁰ The event that is to trigger payment is not readily ascertainable as it is an event that may never occur and that is not readily ascertainable by the holder of the Note, Reed Taylor.²¹ Contrary to the arguments of Defendant AIA, the time of payment under the

¹⁸ Plaintiff's Exhibit A as admitted into the record on March 1, 2007.

¹⁹ Hr. Tr. pp. 70 and 78-79, Exh. A to the Affidavit of Roderick C. Bond filed March 26, 2007.

²⁰ Depo. of John Taylor at pp. 134-135, Exh. "A" to the Aff. of John Ashby filed December 3, 2007.

²¹ Defendant AIA contends the instant matter is analogous to *Hamlin v. Steward*, 622 N.E.2d 535 (Ind.App.1993). AIA contends the *Hamlin* Court held an extension of time to pay a promissory note was enforceable when the modification allowed for payment upon the sale of the Stewards' motel. AIA then argues that the payment extension in the instant case has the same certainty as that in *Hamlin* and should be held sufficiently certain to create an enforceable modification agreement. The Court disagrees. In *Hamlin*, the Stewards borrowed money from the Hamlins to remodel the Stewards' motel in preparation for selling the motel. The Hamlins expected to be repaid upon the sale of the motel. The Stewards made several payments toward the loan then executed a promissory note for the remaining balance. The Stewards subsequently sold the motel but did not receive enough down payment to

terms of the oral modification lacks sufficient certainty to create a valid and enforceable modification agreement.

Finally, the Court must address Defendant AIA's assertion that any insufficiencies in the oral modification, a modification that Plaintiff has at all times denied entering into, are overcome by AIA's reliance on the agreement, i.e. the doctrine of promissory estoppel.

The elements of promissory estoppel are as follows: “ ‘(1) the detriment suffered in reliance was substantial in an economic sense; (2) substantial loss to the promisee acting in reliance was or should have been foreseeable by the promisor; and (3) the promisee must have acted reasonably in justifiable reliance on the promise as made.’” *Mitchell v. Bingham Memorial Hosp.*, 130 Idaho 420, 942 P.2d 544 (1997) (quoting *Black Canyon Racquetball Club, Inc. v. Idaho First Nat'l Bank*, 119 Idaho 171, 178 n. 2, 804 P.2d 900, 907 n. 2 (1991)) (quoting *Mohr v. Shultz*, 86 Idaho 531, 540, 388 P.2d 1002, 1008 (1964))).

Gillespie v. Mountain Park Estates, L.L.C., 138 Idaho 27, 29, 56 P.3d 1277 (2002).

Defendant AIA has failed to show AIA suffered any economic detriment because of its reliance on an extension of time to pay the Promissory Note or that AIA suffered a substantial loss because of its reliance on an extension to pay the Note. It is the position of AIA that it sought an extension because it was struggling financially and feared the Note would go into default. However, AIA has produced no evidence that its difficult financial position, if it is in one, was in part or in whole the result of reliance on an extension of time to pay the \$6 million dollar Note.²² Therefore, the Court finds Defendant AIA has failed to establish the elements of

pay the note. The Hamlin and Stewards then agreed the note could be paid in ten installment payments. However, the buyers of the motel defaulted on the contract and abandoned the motel. When the Stewards were then unable to make the next installment payment, the Hamlin agreed, for a second time, that the note could be sold upon the sale of the motel. The facts in *Hamlin* and the Court's ruling are consistent with the rule that an extension of time must be as certain as the original payment term of the note and, more importantly, the facts in *Hamlin* are distinguishable from the facts in the instant case. Defendant AIA further argues that Plaintiff's reliance on *Irwin Rogers Insurance Agency, Inc. v. Murphy*, 122 Idaho 270, 833 P.2d 128 (Ct.App.1992) is misplaced as the facts in *Murphy* are not on point. The Court, however, finds the Idaho case more analogous to the instant matter than the *Hamlin* case, cited by Defendant AIA, though neither case is on point.

²² AIA argued reliance based on John Taylor's testimony that he took no salary from AIA for a period of time based on his reliance that Reed Taylor agreed to extend the time for payment of the Note. The Court would first not there is some dispute over John Taylor's claim that he took no salary from AIA. However, assuming his statement to be true, the Court nonetheless fails to see how that shows reliance on the part of AIA.

promissory estoppel.

The Court, having found the alleged oral modification invalid and unenforceable for lack of consideration and certainty, need not address the factual question of whether an oral modification was entered into by AIA and Reed Taylor in 2003 and need not determine whether the Note is in default under the terms of the oral modification. The original terms of the Note are, therefore, applicable. Defendant AIA having conceded it is in default under the original terms of the Note, the Court grants Plaintiff Reed Taylor's Motion for Partial Summary Judgment on the Promissory Note, as it appears, based on the evidence before the Court, that a directed verdict for Plaintiff would be warranted.

(II) PRELIMINARY INJUNCTION

STANDARD

"Entitlement to injunctive relief depends upon the presentation of evidence by the applicant, establishing the right to such relief." *Balla v. Murphy*, 116 Idaho 257, 259, 775 P.2d 149 (Ct.App.1989). The decision to grant or deny an injunction is within the discretionary decision making of the court. *Hayden Lake Fire Protection District v. Alcorn*, 141 Idaho 388, 405, 111 P.3d 73 (2004).

ANALYSIS

Plaintiff Reed Taylor, by way of a motion, asks the Court to enter a preliminary injunction ordering: (1) all commissions and related receivables of AIA Services and AIA Insurance be deposited with the Court and placed in an interest bearing account; (2) the original of a promissory note from Washington Bank Properties payable to Universal Life Insurance

Company be deposited with the Court along with all payments received on the Note; and (3) that AIA Services and AIA Insurance be barred from encumbering, selling or transferring any assets.

Plaintiff contends AIA is insolvent under either definition of insolvency as found in I.C. § 55-911. Plaintiff further asserts that, pursuant to a proceeding by a creditor, a corporation found to be insolvent may be subject to judicial dissolution under I.C. § 30-1-1430. While Plaintiff cites the Court to I.C. § 30-1-1430 as authority under which the Court may grant Plaintiff's motion for a preliminary injunction, the Court finds the statute inapplicable. The statute reads in relevant part:

The Idaho district court designated in section 30-1-1431(1), Idaho Code, may dissolve a corporation:

- (3) In a proceeding by a creditor if it is established that:
- (a) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
 - (b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

Idaho Code § 30-1-1430(3).

In the instant case, there has been no determination by the Court that AIA Services and/or AIA Insurance, Inc. is insolvent, nor can the Court make such a determination at this time²³. In addition to the unresolved question of insolvency, there is no creditor's claim that has been reduced to judgment and, without a judgment, there can be no claim reduced to judgment that has been returned unsatisfied upon execution. The Court clearly has no authority at this juncture to judicially dissolve Defendant AIA Services and/or AIA Insurance, Inc.

Plaintiff's requested preliminary injunction would unquestionably have the effect of putting Defendants AIA into dissolution by depriving the company of all operating capital. The

²³ It is not enough that Plaintiff asserts AIA Services and/or AIA Insurance, Inc. are insolvent. While the record contains certain of the companies' financial records, the Court has at no time had the issue of insolvency put before it for determination.

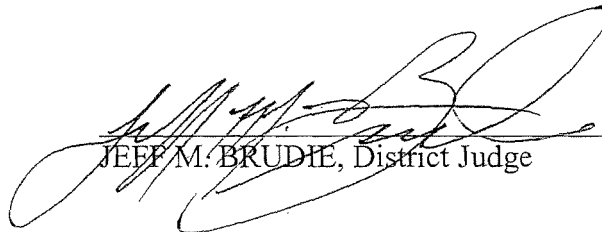
Court, having found it has no authority under I.C. § 30-1-1430, must deny Plaintiff's motion for preliminary injunction.

ORDER

Plaintiff's Motion for Partial Summary Judgment on Promissory Note is hereby GRANTED.

Plaintiff's Motion for Preliminary Injunction is hereby DENIED.

Dated this 8 day of February 2008.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION & ORDER was:

_____ hand delivered via court basket, or

✓ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 8th day of February, 2008, to:

Roderick C. Bond
Ned A. Cannon
Smith and Cannon
508 Eighth St
Lewiston, ID 83501

Jonathan D. Hally
Clark & Feeney
PO Drawer 285
Lewiston, ID 83501

*Messenger
Service*

Paul R. Cressman Jr.
Ahlers & Cressman, PLLC
999 third Ave Ste 3100
Seattle, WA 98104

Michael E. McNichols
Clements, Brown & McNichols
PO Box 1510
Lewiston, ID 83501

*Messenger
Service*

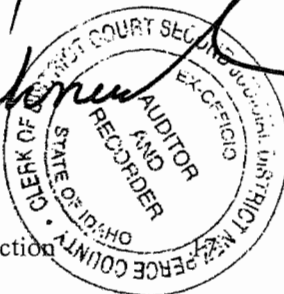
David A. Gittins
PO Box 191
Clarkston, WA 99403

Gary D. Babbitt
D John Ashby
Hawley, Troxell Ennis & Hawley LLP
PO Box 1617
Boise, ID 83701-1617

PATTY O. WEEKS, CLERK

By: *[Signature]*
Deputy

Taylor v. AIA
Opinion on Motion for Partial SJ & Injunction



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Clerk

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PATTY O. WEEKS
CLERK OF THE DIST. COURT

[Signature]
DEPUTY

RODERICK C. BOND
NED A. CANNON, ISBA #2331
SMITH, CANNON & BOND PLLC
Attorneys for Plaintiff Reed J. Taylor
508 Eighth Street
Lewiston, Idaho 83501
Telephone: (208) 743-9428
Fax: (208) 746-8421

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an Idaho corporation; AIA INSURANCE, INC., an Idaho corporation; R. JOHN TAYLOR and CONNIE TAYLOR, individually and the community property comprised thereof; BRYAN FREEMAN, a single person; JOLEE DUCLOS, a single person; CROP USA INSURANCE AGENCY, INC., an Idaho Corporation; and JAMES BECK and CORRINE BECK, individually and the community property comprised thereof;

Defendants.

Case No.: CV-07-00208

PLAINTIFF REED TAYLOR'S
MOTION TO DISSOLVE
PRELIMINARY INJUNCTION
AGAINST REED TAYLOR

Plaintiff Reed J. Taylor ("Reed Taylor") moves the Court to dissolve the Preliminary

Injunction previously entered against him:

PLAINTIFF'S MOTION TO
DISSOLVE PRELIMINARY INJUNCTION - 1

ORIGINAL 1876

I. FACTUAL BACKGROUND

On March 8, 2007, the Court granted the Defendants' Motion for Preliminary Injunction against Reed Taylor. *See* Opinion and Order on Defendants' Motion for Preliminary Injunction, p. 7. On May 31, 2007, the Court denied Reed Taylor's Motion for Reconsideration, but increased the amount of the required bond for the preliminary injunction issued against Reed Taylor to \$200,000. *See* Opinion and Order on Plaintiff's Motions for Reconsideration, Preliminary Injunction and Temporary Restraining Order, p. 13.

On November 25, 2007, Reed Taylor's moved the Court for Partial Summary Judgment of AIA Services' default of the Promissory Note and default under the Amended and Restated Stock Pledge Agreement. On February 8, 2008, the Court granted Reed Taylor's Motion for Partial Summary Judgment. *See* Opinion and Order on Plaintiff's Motion for Partial Summary Judgment.

II. LEGAL AUTHORITY AND ARGUMENT

Reed Taylor requests that the preliminary injunction against him be dissolved. I.R.C.P. 65.

Here, the Court granted Reed Taylor's Motion for Partial Summary Judgment wherein he requested a finding that as a matter of law AIA Services was in default of the Promissory Note and Amended Stock Pledge Agreement, and that the alleged oral modification was unenforceable. The preliminary injunction against Reed Taylor should be dissolved and he should be entitled to pursue his contractual rights.

///

///

III. CONCLUSION

The Preliminary Injunction against Reed Taylor should be dissolved and the \$200,000 bond posted with the Court should be held as security until Reed Taylor is able to file a Motion against the \$200,000 bond.

DATED: This 13th day of February, 2008.

SMITH, CANNON & BOND PLLC

By: 

Roderick C. Bond

Ned A. Cannon

Attorneys for Plaintiff Reed J. Taylor

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W

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PATTY O. WEEKS
CLERK OF THE DIST. COURT

[Signature]
DEPUTY

RODERICK C. BOND
NED A. CANNON, ISBA #2331
SMITH, CANNON & BOND PLLC
Attorneys for Plaintiff Reed J. Taylor
508 Eighth Street
Lewiston, Idaho 83501
Telephone: (208) 743-9428
Fax: (208) 746-8421

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an Idaho
corporation; R. JOHN TAYLOR and CONNIE
TAYLOR, individually and the community
property comprised thereof; BRYAN
FREEMAN, a single person; JOLEE DUCLOS,
a single person; CROP USA INSURANCE
AGENCY, INC., an Idaho Corporation; and
JAMES BECK and CORRINE BECK,
individually and the community property
comprised thereof;

Defendants.

Case No.: CV-07-00208

AFFIDAVIT OF REED J. TAYLOR IN
SUPPORT OF PLAINTIFF'S MOTION
TO DISSOLVE PRELIMINARY
INJUNCTION AGAINST REED
TAYLOR

STATE OF IDAHO)
) ss:
COUNTY OF NEZ PERCE)

I, Reed J. Taylor, being first duly sworn on oath, deposes and says:

AFFIDAVIT OF REED TAYLOR - 1

1879
ORIGINAL

1. I am over the age of eighteen years, the Plaintiff in the above-entitled action, competent to testify in court, and make this Affidavit based upon my personal knowledge.

2. I personally attended the deposition of R. John Taylor taken on January 28-30, 2008. At John's deposition he testified to the following:

(a) AIA Insurance no longer has any operational employees directly employed by AIA Insurance. All of AIA Insurance's employees are now directly employed by Crop USA. John testified in his affidavit filed in opposition to my motion for preliminary injunction that granting my motion would harm AIA Insurance's long-term employees. I learned at his deposition that John had transferred AIA Insurance's employees to Crop USA effective January 1, 2008.

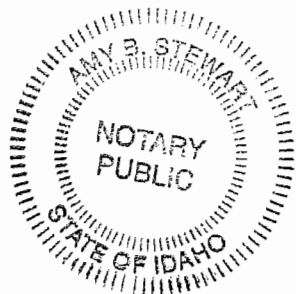
(b) The Washington Bank Properties Promissory Note (which I requested the Court to protect in my Motion for Preliminary Injunction) was pledged to Crop USA prior to my Motion for Preliminary Injunction.

3. AIA Insurance's value has diminished from the time that I have filed my action through today's date. AIA Insurance no longer has any employees and I need to be able contact former employees to put together a work force to operate AIA Insurance. I also need to be able to begin contacting AIA Insurance's business partners and agents to begin operating the company.

DATED: This 13th day of February, 2008.


Reed J. Taylor

SUBSCRIBED AND SWORN to before me this 13th day of February, 2008.



Amy B. Stewart
Notary Public for Idaho
Residing at: Lewiston
My commission expires: 1/24/2012

✓clw

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PATTY L. WEEKS
CLERK OF THE DIST. COURT

Patty Weeks
DEPUTY

RODERICK C. BOND
NED A. CANNON, ISBA #2331
SMITH, CANNON & BOND PLLC
Attorneys for Plaintiff Reed J. Taylor
508 Eighth Street
Lewiston, Idaho 83501
Telephone: (208) 743-9428
Fax: (208) 746-8421

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an Idaho
corporation; R. JOHN TAYLOR and CONNIE
TAYLOR, individually and the community
property comprised thereof; BRYAN
FREEMAN, a single person; JOLEE DUCLOS,
a single person; CROP USA INSURANCE
AGENCY, INC., an Idaho Corporation; and
JAMES BECK and CORRINE BECK,
individually and the community property
comprised thereof;

Defendants.

Case No.: CV-07-00208

PLAINTIFF REED TAYLOR'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AGAINST AIA
SERVICES CORPORATION FOR
THE AMOUNT DUE ON THE
PROMISSORY NOTE AND MOTION
FOR RULE 54(b) CERTIFICATION
OF JUDGMENT

Plaintiff Reed J. Taylor ("Reed Taylor") moves the Court against AIA Services Corporation for Partial Summary for the Amount Due on the Promissory Note and for a Rule 54(b) Certification of Judgment:

PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT FOR AMOUNT
DUE AND RULE 54(b) CERTIFICATION - 1

ORIGINAL

1882

I. FACTUAL BACKGROUND

On November 25, 2007, Reed Taylor's moved the Court for Partial Summary Judgment of AIA Services' default of the Promissory Note. On February 8, 2008, the Court granted Reed Taylor's Motion for Partial Summary Judgment. *See* Opinion and Order on Plaintiff's Motion for Partial Summary Judgment. Under the terms of the Promissory Note, Reed Taylor is entitled to payment of the \$6,000,000, plus all accrued interest. *See* Ex. A to the Preliminary Injunction Hearing held on March 1, 2007. Interest accrues at the rate of 8.25% per annum on the principal amount of \$6,000,000. *Id.*

As of February 14, 2008, AIA Services Corporation is indebted to Reed Taylor in the amount of \$8,498,891.36, which remains unpaid and due. *See* Affidavit of Reed Taylor, ¶ 2. Interest on the unpaid principal balance of \$6,000,000 accrues at the rate of \$1,356.16 per day. *Id.*; Ex. A to the Preliminary Injunction Hearing held on March 1, 2007.

II. LEGAL AUTHORITY AND ARGUMENT

Reed Taylor requests that the Court enter an order of the amount due on the Promissory Note pursuant to I.R.C.P. 56 and certify the judgment as final pursuant to I.R.C.P. 54(b).

A. As of the Date of this Motion, AIA Services Is Indebted to Reed Taylor in the Amount of \$8,498,891.36, Plus Accrued Interest of \$1,356.16 Per Day Thereafter.

Summary judgment is proper when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c).

Here, Reed Taylor established that AIA Services Corporation is in default of the Promissory Note when the Court granted his Motion for Partial Summary Judgment. Reed

Taylor is entitled to partial summary judgment on the amount owed to him by AIA Services Corporation. Thus, the Court should enter a judgment against AIA Services Corporation for the amount of \$8,498,891.36, plus accrued interest of \$1,356.16 per day until the judgment is entered. Interest should accrue at the statutory rate after the date of judgment.

B. There Is No Just Reason For Delay Entering a Final Judgment.

Even when a case involves multiple parties and claims, the Court may certify a judgment as final. I.R.C.P. 54(b)(1).

Here, Reed Taylor has established that he is entitled to partial summary judgment against AIA Services Corporation for the amounts owed to him. There is no just reason to delay entering a final judgment against AIA Services Corporation and certify the judgment in accordance with I.R.C.P. 54(b)(1).

III. CONCLUSION

The Court should enter an order of partial summary judgment against AIA Services Corporation in the amount of \$8,498,891.36, plus all accrued and unpaid interest up through the date of the judgment and certify the judgment as final pursuant to I.R.C.P. 54(b).

DATED: This 14th day of February, 2008.

SMITH, CANNON & BOND PLLC

By: 

Roderick C. Bond

Ned A. Cannon

Attorneys for Plaintiff Reed J. Taylor

clew

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PATTY D. WEEKS
CLERK OF THE DIST. COURT
[Signature]
DEPUTY

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Attorneys for Plaintiff Reed J. Taylor
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Lewiston, Idaho 83501
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Fax: (208) 746-8421

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

v.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an Idaho
corporation; R. JOHN TAYLOR and CONNIE
TAYLOR, individually and the community
property comprised thereof; BRYAN
FREEMAN, a single person; JOLEE DUCLOS,
a single person; CROP USA INSURANCE
AGENCY, INC., an Idaho Corporation; and
JAMES BECK and CORRINE BECK,
individually and the community property
comprised thereof;

Defendants.

Case No.: CV-07-00208

AFFIDAVIT OF REED J. TAYLOR IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT AGAINST AIA
SERVICES CORPORATION FOR
AMOUNT DUE ON PROMISSORY
NOTE AND MOTION FOR
CERTIFICATE OF FINAL
JUDGMENT UNDER RULE 54(b)

STATE OF IDAHO)
) ss:
COUNTY OF NEZ PERCE)

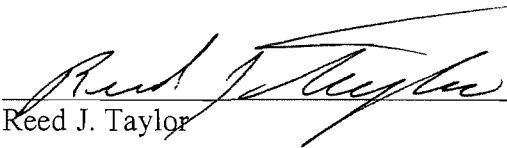
AFFIDAVIT OF REED TAYLOR – 1

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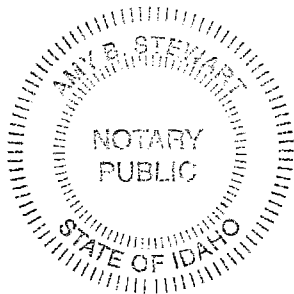
I, Reed J. Taylor, being first duly sworn on oath, deposes and says:

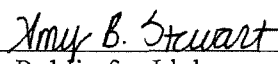
1. I am over the age of eighteen years, the Plaintiff in the above-entitled action, competent to testify in court, and make this Affidavit based upon my personal knowledge.
2. AIA Services Corporation has not paid the \$6,000,000 principal, plus accrued interest, owed to me as of the date of this Affidavit. The amount AIA Services Corporation owes me as of the date of this Affidavit is \$8,498,891.36. Interest accrues at the rate of 8.25% per annum on the \$6,000,000 principal, which also amounts to interest accruing at the rate of \$1,356.16 per day.

DATED: This 14th day of February, 2008.


Reed J. Taylor

SUBSCRIBED AND SWORN to before me this 14th day of February, 2008.




Notary Public for Idaho
Residing at: Lewiston
My commission expires: 1/24/2012

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PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

ORIGINAL

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Attorneys for AIA Services Corporation,
AIA Insurance, Inc., and CropUSA

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QUARLES & BRADY LLP
500 West Madison Street, Suite 3700
Chicago, Illinois 60661-2511
Attorneys for CropUSA

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

vs.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an
Idaho corporation; R. JOHN TAYLOR and
CONNIE TAYLOR, individually and the
community property comprised thereof;
BRYAN FREEMAN, a single person; JOLEE
DUCLOS, a single person; CROP USA
INSURANCE AGENCY, INC., an Idaho
Corporation; and JAMES BECK and
CORRINE BECK, individually and the

Case No. CV-07-00208

CROPUSA'S ANSWER TO
PLAINTIFF'S FIFTH AMENDED
COMPLAINT, COUNTERCLAIMS,
AND DEMAND FOR JURY TRIAL

CROPUSA'S ANSWER TO PLAINTIFF'S FIFTH AMENDED COMPLAINT,
COUNTERCLAIMS, AND DEMAND FOR JURY TRIAL - 1

1887

community property comprised thereof,)
)
Defendants.)
)
_____)
CROPUSA INSURANCE AGENCY, INC.,)
)
Counterclaimant,)
vs.)
)
REED J. TAYLOR, a single person,)
)
Counterdefendant.)
_____)

Defendant CropUSA, Insurance Agency Inc. (the “Defendant”), by and through its counsel of record, Quarles & BradyLLP and Hawley Troxell Ennis & Hawley LLP, responds to Plaintiff’s Fifth Amended Complaint (the “Complaint”) as follows:

FIRST DEFENSE

Plaintiff’s Fifth Amended Complaint, and each and every claim and allegation thereof, fails to state a claim against this Defendant upon which relief can be granted.

SECOND DEFENSE

This Defendant denies each and every allegation contained in Plaintiff’s Complaint unless expressly and specifically admitted herein.

Parties, Jurisdiction, and Venue

1. This Defendant admits the allegations in paragraph 1.1 of the Complaint.
2. This Defendant admits the allegations in paragraph 1.2 of the Complaint.
3. This Defendant admits the allegations in paragraph 1.3 of the Complaint.
4. This Defendant admits the allegations in paragraph 1.4 of the Complaint.

5. Answering paragraph 1.5 of the Complaint, this Defendant admits that R. John Taylor ("John Taylor") and Connie Taylor were husband and wife until on or about December 16, 2005, and at all relevant times were residents of Lewiston, Nez Perce County, Idaho. This Defendant denies all other allegations in paragraph 1.5 of the Complaint not otherwise specifically admitted herein.

6. This Defendant admits the allegations in paragraph 1.6 of the Complaint.

7. This Defendant admits the allegations in paragraph 1.7 of the Complaint.

8. This Defendant admits the allegations in paragraph 1.8 of the Complaint.

9. Answering paragraph 1.9 of the Complaint, this Defendant admits that James Beck and Corrine Beck are residents of the State of Minnesota and denies all other allegations in paragraph 1.9 of the Complaint not otherwise specifically admitted herein.

10. Paragraph 1.10 of the Complaint states a legal conclusion to which no response is required.

11. Paragraph 1.11 of the Complaint states a legal conclusion to which no response is required.

Factual Background

12. Answering paragraph 2.1 of the Complaint, this Defendant admits that John Taylor was, at all relevant times, an officer and director of AIA Services, AIA Insurance, and Crop USA, and that he owns approximately 40% of the outstanding shares of Crop USA. This Defendant denies all other allegations in paragraph 2.1 of the Complaint not otherwise specifically admitted herein.

13. Answering paragraph 2.2 of the Complaint, this Defendant admits that John Taylor and Connie Taylor were divorced through an interlocutory decree on or around December 16, 2005, but this Defendant denies all other allegations in paragraph 2.2 of the Complaint.

14. Paragraph 2.3 of the Complaint does not state any allegations as against this Defendant to which a response is required. To the extent a response is required, this Defendant denies the allegations in paragraph 2.3 of the Complaint.

15. This Defendant denies the allegations in paragraph 2.4 of the Complaint.

16. Answering paragraph 2.5 of the Complaint, this Defendant admits that JoLee Duclos ("Duclos") is an officer of AIA Services, AIA Insurance, and Crop USA, and that she is a shareholder in Crop USA. This Defendant denies all other allegations in paragraph 2.5 of the Complaint not otherwise specifically admitted herein.

17. Answering paragraph 2.6 of the Complaint, this Defendant admits that Bryan Freeman ("Freeman") was a director of AIA Services, AIA Insurance, and Crop USA, and that Bryan Freeman is a shareholder in Crop USA. These Defendants deny all other allegations in paragraph 2.6 of the Complaint not otherwise specifically admitted herein.

18. This Defendant admits that CropUSA cooperated with AIA pursuant to certain agreements, and denies all deny all other allegations in paragraph 2.7 of the Complaint not otherwise specifically admitted herein.

19. This Defendant admits the allegations in paragraph 2.8 of the Complaint.

20. Answering paragraph 2.9 of the Complaint, this Defendant admits that James Beck is a shareholder of AIA Services and Crop USA and that, during certain times, James Beck was a member of the boards of directors for AIA Insurance and AIA Services. This Defendant denies all other allegations in paragraph 2.9 of the Complaint not otherwise specifically admitted herein.

21. Answering paragraph 2.10 of the Complaint, this Defendant admits the first and third sentences, allege that in 1995 Reed Taylor desired to retire and have AIA Services redeem his stock, and deny each and every other allegation in paragraph 2.10 not otherwise admitted herein.

22. Answering paragraph 2.11 of the Complaint, this Defendant admit that AIA Insurance is a wholly owned subsidiary of AIA Services and that AIA Insurance is a lessee of the office building located at 111 Main Street, Lewiston, Idaho. This Defendant denies all other allegation in paragraph 2.11 of the Complaint not otherwise specifically admitted herein.

23. Answering paragraph 2.12 of the Complaint, this Defendant states that the agreements speak for themselves.

24. Answering paragraph 2.13 of the Complaint, this Defendant states that the documents speak for themselves, and deny all other allegations in paragraph 2.13 of the Complaint not otherwise specifically admitted herein.

25. Answering paragraph 2.14 of the Complaint, this Defendant admits that the Stock Redemption Agreement, Stock Pledge Agreement, and Security Agreement were authorized by the Board of Directors of AIA Services. This Defendant states that the agreements speak for themselves, and deny all other allegations in paragraph 2.13 of the Complaint not otherwise specifically admitted herein.

26. Answering paragraph 2.15 of the Complaint, this Defendant admits that in 1996 AIA Services and Plaintiff agreed to modify the Stock Redemption Agreement and executed the Stock Redemption Restructure Agreement, an Amended and Restated Stock Pledge Agreement, and an Amended and Restated Security Agreement. Those documents speak for themselves, and this Defendant denies all other allegations in paragraph 2.15 of the Complaint not otherwise specifically admitted herein.

27. Answering paragraph 2.16 of the Complaint, this Defendant states that the agreements speak for themselves, the agreements were amended at a later time, and this Defendant denies all other allegations in paragraph 2.16 of the Complaint not otherwise specifically admitted herein.

28. Answering paragraph 2.17 of the Complaint, this Defendant states that the Amended Stock Pledge Agreement speaks for itself, and this Defendant denies each and every allegation in paragraph 2.17 of the Complaint not otherwise specifically admitted herein.

29. Answering paragraph 2.18 of the Complaint, this Defendant states that the Amended Stock Pledge Agreement speaks for itself. This Defendant admits that AIA Services did not post bonds or other security for the payment of the Promissory Note and denies all other allegations in paragraph 2.18 of the Complaint not specifically admitted herein.

30. Answering paragraph 2.19 of the Complaint, this Defendant states that the Amended Stock Pledge Agreement speaks for itself and denies all other allegations in paragraph 2.19 of the Complaint not otherwise specifically admitted herein.

31. Answering paragraph 2.20 of the Complaint, this Defendant states that the Amended Stock Pledge Agreement speaks for itself and denies all other allegations in paragraph 2.20 of the Complaint not otherwise specifically admitted herein.

32. This Defendant denies the allegations in paragraph 2.21 of the Complaint.

33. Answering paragraph 2.22 of the Complaint, this Defendant admits that Plaintiff was, during certain relevant times, the largest creditor of AIA Services, and denies all other allegations in paragraph 2.22 of the Complaint not otherwise specifically admitted herein.

34. This Defendant denies the allegations in paragraph 2.23 of the Complaint.

35. This Defendant denies the allegations in paragraph 2.24 of the Complaint.

36. This Defendant denies the allegations in paragraph 2.25 of the Complaint.

37. Answering paragraph 2.26 of the Complaint, this Defendant admits that Plaintiff claimed that AIA Services was in default, and this Defendant denies all other allegations in paragraph 2.26 of the Complaint not otherwise specifically admitted herein.

38. Answering paragraph 2.27 of the Complaint, this Defendant admits that Plaintiff had never attempted to accelerate any of the indebtedness due under the Promissory Note prior to December 12, 2006, admits that AIA Services continued to make interest payments in an agreed upon amount before and after the date of Plaintiff's original complaint, and denies all other allegations in paragraph 2.27 of the Complaint not otherwise specifically admitted herein.

39. Answering paragraph 2.28 of the Complaint, this Defendant states that the Amended Stock Pledge Agreement speaks for itself, and this Defendant denies each and every other allegation in paragraph 2.28 of the Complaint.

40. Answering paragraph 2.29 of the Complaint, this Defendant admits that Plaintiff attempted to schedule a special shareholder meeting for December 26, 2006, admits that no special shareholder meeting was held on that date, and denies each and every other allegation in paragraph 2.29 of the Complaint.

41. Answering paragraph 2.30 of the Complaint, this Defendant admit that the quoted words are part of one of the sentences of a letter from R. John Taylor to Plaintiff's legal counsel, and denies each and every allegation in paragraph 2.30 of the Complaint.

42. Answering paragraph 2.31 of the Complaint, this Defendant admits that Reed Taylor demanded a special shareholder meeting for February 5, 2007, admits that no special shareholder meeting was held on that date, denies that Reed Taylor had a right to call a meeting to vote

AIA Insurance Shares, and denies each and every allegation in paragraph 2.31 of the Complaint not otherwise specifically admitted herein.

43. this Defendant denies the allegations in paragraph 2.32 of the Complaint.

44. Answering paragraph 2.33 of the Complaint, this Defendant admits that Reed Taylor executed a Consent in Lieu of Special Shareholder Meeting of AIA Insurance, and this Defendant denies each and every allegation in paragraph 2.33 of the Complaint not otherwise specifically admitted herein.

45. Answering paragraph 2.34 of the Complaint, this Defendant admits that AIA Insurance paid \$1,510,693.00 to purchase Series C Preferred Shares in AIA Services from Crop USA. This Defendant admits that AIA Services' 401(k) Plan held Preferred C shares. This Defendant denies all other allegations in paragraph 2.34 of the Complaint not otherwise specifically admitted herein.

46. Answering paragraph 2.35 of the Complaint, this Defendant admits that John Taylor purchased a parking lot and denies each and every allegation in paragraph 2.35 of the Complaint not otherwise specifically admitted herein.

47. This Defendant denies the allegations in paragraph 2.36 of the Complaint.

48. This Defendant denies the allegations in paragraph 2.37 of the Complaint.

49. Answering paragraph 2.38 of the Complaint, this Defendant admits that Reed Taylor executed a Consent in Lieu of Board Meeting on or around February 22, 2007 and that AIA refused to recognize the Consent as binding on them. This Defendant denies all other allegations in paragraph 2.38 of the Complaint not otherwise specifically admitted herein.

50. This Defendant denies the allegations in paragraph 2.39 of the Complaint.

51. Answering paragraph 2.40 of the Complaint, this Defendant admits that Freeman and Duclos resigned as members of the Board of Directors of AIA Insurance and AIA Services, admit that John Taylor, as Chairman of the Board of Directors, appointed Connie Taylor and James Beck as directors, and denies all other allegations in paragraph 2.40 of the Complaint not otherwise specifically admitted herein.

52. This Defendant denies the allegation in paragraph 2.41 of the Complaint.

53. Answering paragraph 2.42 of the Complaint, this Defendant admits that Plaintiff has an interest as provided for in the Amended and Restated Security Agreement, which agreement speaks for itself, admit that Plaintiff has demanded that no funds in which he has a security interest should be used to pay the legal fees of any Defendant, but deny all other allegations in paragraph 2.42 of the Complaint not otherwise specifically admitted herein.

54. This Defendant denies the allegations in paragraph 2.43 of the Complaint.

55. Answering paragraph 2.44, this Defendant admits that Crop USA purchased Sound Insurance and denies all other allegations in paragraph 2.44 of the Complaint not otherwise specifically admitted herein.

56. Answering paragraph 2.45 of the Complaint, this Defendant admits that Global Travel was a tenant in AIA Insurance's office building and that Global Travel has relocated to a different office building, but this Defendant denies all other allegations in paragraph 2.45 of the Complaint not otherwise specifically admitted herein.

57. This Defendant denies the allegations in paragraph 2.46 of the Complaint.

58. This Defendant denies the allegations in paragraph 2.47 of the Complaint.

59. Answering paragraph 2.48 of the Complaint, this Defendant alleges that AIA Service and AIA Insurance are and were being operated for the benefit of AIA Services and

AIA Insurance and denies all other allegations in paragraph 2.48 of the Complaint not otherwise specifically admitted herein.

60. This Defendant denies the allegations in paragraph 2.49 of the Complaint.

61. This Defendant denies the allegations in paragraph 2.50 of the Complaint.

62. This Defendant denies the allegations in paragraph 2.51 of the Complaint.

63. This Defendant denies the allegations in paragraph 2.52 of the Complaint.

64. This Defendant denies the allegations in paragraph 2.53 of the Complaint.

65. This Defendant denies the allegations in paragraph 2.54 of the Complaint.

66. Answering paragraph 2.55 of the Complaint, this Defendant states that the Executive Officer's Agreement speaks for itself, and this Defendant denies all other allegations in paragraph 2.55 of the Complaint not otherwise specifically admitted herein.

67. This Defendant denies the allegations in paragraph 2.56 of the Complaint.

68. This Defendant denies the allegations in paragraph 2.57 of the Complaint.

69. This Defendant denies the allegations in paragraph 2.58 of the Complaint.

70. Paragraph 2.59 does not state any allegations against this Defendant to which a response is required. To the extent a response is required, this Defendant denies the allegations in paragraph 2.59 of the Complaint.

First Cause of Action – Breaches of Contract

71. This Defendant incorporates by reference its answers and denials set forth in the preceding paragraphs.

72. Answering paragraphs 3.2 through 3.4 of the Complaint, this defendant states that the Promissory Note, Amended Stock Pledge Agreement, Amended Security Agreement, and

Restructure Agreement speak for themselves, and this defendant denies all other allegations in paragraphs 3.3 through 3.4 of the Complaint not otherwise specifically admitted herein.

Second Cause of Action – Fraudulent Transfers

73. This Defendant incorporates by reference its answers and denials set forth in the preceding paragraphs of this Answer.

74. This Defendant denies all allegations in paragraphs 4.2 through 4.4 of the Complaint.

Third Cause of Action – Misrepresentations/Fraud

75. This Defendant incorporates by reference its answers and denials set forth in the preceding paragraphs of this Answer.

76. This Defendant denies all allegations in paragraphs 5.2 through 5.4 of the Complaint.

Fourth Cause of Action – Conversion

77. This Defendant incorporates by reference its answers and denials set forth in the preceding paragraphs of this Answer.

78. This Defendant denies all allegations in paragraphs 6.2 through 6.3 of the Complaint.

Fifth Cause of Action – Alter Ego/Piercing Corporate Vail [sic]

79. This Defendant incorporates by reference its answers and denials set forth in the preceding paragraphs of this Answer.

80. This Defendant denies all allegations in paragraphs 7.2 through 7.5 of the Complaint.

Sixth Cause of Action – Constructive Trust

81. This Defendant denies incorporates by reference its answers and denials set forth in the preceding paragraphs of this Answer.

82. This Defendant denies all allegations in paragraphs 8.2 through 8.4 of the Complaint.

Seventh Cause of Action – Director Liability

83. This Defendant incorporates by reference its answers and denials set forth in the preceding paragraphs of this Answer.

84. This Defendant denies all allegations in paragraphs 9.2 through 9.4 of the Complaint.

Eighth Cause of Action – Specific Performance

85. This Defendant incorporates by reference its answers and denials set forth in the preceding paragraphs of this Answer.

86. This Defendant denies all allegations in paragraphs 10.2 through 10.4 of the Complaint.

Ninth Cause of Action – Breach of Fiduciary Duties

87. This Defendant incorporates by reference its answers and denials set forth in the preceding paragraphs of this Answer.

88. This Defendant denies all allegations in paragraphs 11.2 through 11.4 of the Complaint.

Tenth Cause of Action – Breach of the Implied Covenant of Good Faith and Fair Dealing

89. This Defendant incorporates by reference its answers and denials set forth in the preceding paragraphs of this Answer.

90. This Defendant denies all allegations in paragraphs 12.2 through 12.3 of the Complaint.

Eleventh Cause of Action – Civil Conspiracy

91. This Defendant incorporates by reference its answers and denials set forth in the preceding paragraphs of this Answer.

92. This Defendant denies all allegations in paragraphs 13.2 through 13.3 of the Complaint.

Prayer for Relief

93. Answering paragraphs 14.1 through 14.41, this Defendant denies that Plaintiff is entitled to any of the relief prayed for in his Complaint.

THIRD DEFENSE

At different times since the written agreements were executed, Plaintiff and AIA have orally modified the written agreements. The modifications include, without limitation, an agreement that the interest payable to Plaintiff from AIA Services would be paid in installments or \$15,000 per month (together with the assumption of responsibility for other expenses). AIA Services has paid Plaintiff the sum of \$15,000 per month since 2003 and has assumed responsibility for the other agreed expenses in accordance with the modified agreements since they were entered into and Plaintiff has accepted those payments. There is no default of the modified agreements.

FOURTH DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations, including Idaho Code §§ 5-216, 5-218, 5-224, 5-237 and 55-918.

FIFTH DEFENSE

Plaintiff is estopped from asserting his claims against this Defendant.

SIXTH DEFENSE

Plaintiff has waived his right to assert claims against this Defendant.

SEVENTH DEFENSE

Plaintiff's claims against this Defendant is barred by the equitable doctrine of unclean hands.

EIGHTH DEFENSE

Plaintiff's claim in his THIRD CAUSE OF ACTION violate I.R.C.P. 9(b).

NINTH DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

TENTH DEFENSE

Plaintiff's alleged damages are subject to the right of setoff.

FIRST COUNTERCLAIM BREACH OF FIDUCIARY DUTY AND INTERFERENCE OF CONTRACT

1. In March of 2000, CropUSA contracted with Great American Insurance Corp. (an SRA holder) for the placement of federal crop insurance. Reed Taylor was appointed and at all relevant times hereafter acted as Sales Manager for CropUSA and owed a fiduciary to CropUSA.

2. After 2000, Reed J. Taylor and his sales force, contrary to instructions from CropUSA, used scare tactics with Great American, the insurance underwriter of CropUSA, and its agents.

3. Great American terminated the agency contract with CropUSA after the sales closing date of March 15, 2002 because of the high pressure tactics used by Reed J. Taylor.

4. The loss of the underwriter, Great American, cost CropUSA millions of dollars in lost premiums and commissions.

5. Reed J. Taylor had acted in bad faith and in an unprofessional manner.

6. As a result of Great American's termination of its contract with CropUSA, CropUSA had no ability to make crop insurance sales.

7. CropUSA attempted to sign a contract with Heartland Insurance for writing crop insurance and contrary to instructions from CropUSA, Reed J. Taylor went to Heartland and threatened its President Mike Miller which resulted in losing Heartland as an underwriter.

8. Subsequently, CropUSA executed a contract with Producers Lloyds out of Texas for selling federal crop insurance and sales began again; however Producers Lloyds had much more limited sales territory than Great American, which had a national network

9. Reed J. Taylor as sales manager for CropUSA owed a fiduciary duty to CropUSA and breached that duty and intentionally interfered in the contractual relationships that CropUSA had with its underwriters for crop insurance causing CropUSA to lose millions of dollars, which damages will be proved at trial.

10. Based on the conduct of Reed J. Taylor Defendant will seek amendment of its prayer for relief hereto and are entitled to an award of punitive damages.

SECOND COUNTERCLAIM TRESPASS

11. In the early morning hours of Sunday, February 25, 2007, Plaintiff and several of his associates entered the offices of CropUSA Insurance without notice and without permission, which constitutes an intentional trespass on the property of CropUSA, which causes damages in amounts which will be proved at trial.

ATTORNEYS' FEES

This Defendant has been required to retain the services of Hawley Troxell Ennis and Hawley LLP and is entitled to an award of attorneys' fees pursuant to I.C. §§ 12-120, 12-121, and/or other applicable law.

NOTICE OF INTENT TO AMEND

This Defendant hereby gives notice of its intent to amend this answer and counterclaim to add additional claims, defenses and counterclaims, including a claim for punitive damages, as discovery is conducted.

PRAYER FOR RELIEF

WHEREFORE, this Defendant requests the Court:

1. To dismiss the Fifth Amended Complaint with prejudice;
2. To award this Defendant damages in the amounts to be proven at trial;
3. To award punitive damages to Defendant as may be allowed;
4. For all costs and attorney fees as provided by contract or statute, including Idaho Code § 12-120 and § 12-121 or other applicable law.
5. For such other and further relief as the Court may find just.

DEMAND FOR JURY TRIAL

This Defendant hereby demands a trial by a jury of twelve (12).

DATED THIS 21 day of February, 2008.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By 

Gary D. Babbitt ISB No. 1486
Attorneys for CropUSA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of February, 2008, I caused to be served a true copy of the foregoing CROPUSA'S ANSWER TO PLAINTIFF'S FIFTH AMENDED COMPLAINT, COUNTERCLAIMS, AND DEMAND FOR JURY TRIAL by the method indicated below, and addressed to each of the following:

Roderick C. Bond
Ned A. Cannon
Smith, Cannon & Bond PLLC
508 Eighth Street
Lewiston, ID 83501
[Attorneys for Plaintiff]

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy
☒ Email

David A. Gittins
Law Office of David A. Gittins
P.O. Box 191
Clarkston, WA 99403
[Attorney for Defendants Duclos and Freeman]


☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy
☒ Email

Michael E. McNichols
Clements Brown & McNichols
321 13th Street
Lewiston, ID 83501
[Attorneys for Defendant R. John Taylor]

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy
☒ Email

Jonathan D. Hally
Clark & Feeney
P.O. Box 285
Lewiston, ID 83501
[Attorneys for Defendant Connie Taylor, James Beck
and Corrine Beck]

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy
☒ Email


Gary D. Babbitt

ORIGINAL

Gary D. Babbitt ISB No. 1486
D. John Ashby ISB No. 7228
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: (208) 344-6000
Facsimile: (208) 342-3829
Email: gdb@hteh.com
jash@hteh.com

Attorneys for Defendants/Counterclaimants AIA
Services Corporation, and AIA Insurance, Inc.

FILED

2008 FEB 25 AM 10 05

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

vs.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an
Idaho corporation; R. JOHN TAYLOR and
CONNIE TAYLOR, individually and the
community property comprised thereof;
BRYAN FREEMAN, a single person; JOLEE
DUCLOS, a single person; CROP USA
INSURANCE AGENCY, INC., an Idaho
Corporation; and JAMES BECK and
CORRINE BECK, individually and the
community property comprised thereof,

Defendants.

Case No. CV-07-00208

AIA SERVICES CORPORATION'S AND
AIA INSURANCE INC.'S ANSWER TO
PLAINTIFF'S FIFTH AMENDED
COMPLAINT, COUNTERCLAIMS,
AND DEMAND FOR JURY TRIAL

AIA SERVICES CORPORATION'S AND AIA INSURANCE INC.'S ANSWER TO
PLAINTIFF'S FIFTH AMENDED COMPLAINT, COUNTERCLAIMS, AND
DEMAND FOR JURY TRIAL - 1

1904

AIA SERVICES CORPORATION, an Idaho)
corporation; and AIA INSURANCE, INC., an)
Idaho corporation,)
)
Counterclaimants,)
vs.)
)
REED J. TAYLOR, a single person,)
)
Counterdefendant.)

Defendants AIA Services Corporation and AIA Insurance Inc. (collectively, “AIA” or “these Defendants”), by and through their counsel of record, Hawley Troxell Ennis & Hawley LLP, respond to Plaintiff’s Fifth Amended Complaint (the “Complaint”) as follows:

FIRST DEFENSE

Plaintiff’s Fifth Amended Complaint, and each and every claim and allegation thereof, fails to state a claim against these Defendants upon which relief can be granted.

SECOND DEFENSE

Defendants deny each and every allegation contained in Plaintiff’s Complaint unless expressly and specifically admitted herein.

PARTIES, JURISDICTION, AND VENUE

1. These Defendants admit the allegations in paragraph 1.1 of the Complaint.
2. These Defendants admit the allegations in paragraph 1.2 of the Complaint.
3. These Defendants admit the allegations in paragraph 1.3 of the Complaint.
4. These Defendants admit the allegations in paragraph 1.4 of the Complaint.
5. Answering paragraph 1.5 of the Complaint, these Defendants admit that R. John

Taylor (“John Taylor”) and Connie Taylor were husband and wife until on or about December 16, 2005, and at all relevant times were residents of Lewiston, Nez Perce County,

Idaho. These Defendants deny all other allegations in paragraph 1.5 of the Complaint not otherwise specifically admitted herein.

6. These Defendants admit the allegations in paragraph 1.6 of the Complaint.

7. These Defendants admit the allegations in paragraph 1.7 of the Complaint.

8. These Defendants admit the allegations in paragraph 1.8 of the Complaint.

9. Answering paragraph 1.9 of the Complaint, these Defendants admit that James Beck and Corrine Beck are residents of the State of Minnesota and deny all other allegations in paragraph 1.9 of the Complaint not otherwise specifically admitted herein.

10. Paragraph 1.10 of the Complaint states a legal conclusion to which no response is required.

11. Paragraph 1.11 of the Complaint states a legal conclusion to which no response is required.

FACTUAL BACKGROUND

12. Answering paragraph 2.1 of the Complaint, these Defendants admit that John Taylor was, at all relevant times, an officer and director of AIA Services, AIA Insurance, and Crop USA, and that he owns approximately 40% of the outstanding shares of Crop USA. These Defendants deny all other allegations in paragraph 2.1 of the Complaint not otherwise specifically admitted herein.

13. Answering paragraph 2.2 of the Complaint, these Defendants admit that John Taylor and Connie Taylor were divorced through an interlocutory decree on or around December 16, 2005, but these Defendants deny all other allegations in paragraph 2.2 of the Complaint.

14. Paragraph 2.3 of the Complaint does not state any allegations as against these Defendants to which a response is required. To the extent a response is required, these Defendants deny the allegations in paragraph 2.3 of the Complaint.

15. These Defendants deny the allegations in paragraph 2.4 of the Complaint.

16. Answering paragraph 2.5 of the Complaint, these Defendants admit that JoLee Duclos ("Duclos") is an officer of AIA Services, AIA Insurance, and Crop USA, and that she is a shareholder in Crop USA. These Defendants deny all other allegations in paragraph 2.5 of the Complaint not otherwise specifically admitted herein.

17. Answering paragraph 2.6 of the Complaint, these Defendants admit that Bryan Freeman ("Freeman") was a director of AIA Services, AIA Insurance, and Crop USA, and that Bryan Freeman is a shareholder in Crop USA. These Defendants deny all other allegations in paragraph 2.6 of the Complaint not otherwise specifically admitted herein.

18. These Defendants admits that CropUSA cooperated with AIA pursuant to certain agreements, and deny all deny all other allegations in paragraph 2.7 of the Complaint not otherwise specifically admitted herein.

19. These Defendants admit the allegations in paragraph 2.8 of the Complaint.

20. Answering paragraph 2.9 of the Complaint, these Defendants admit that James Beck is a shareholder of AIA Services and Crop USA and that, during certain times, James Beck was a member of the boards of directors for AIA Insurance and AIA Services. These Defendants deny all other allegations in paragraph 2.9 of the Complaint not otherwise specifically admitted herein.

21. Answering paragraph 2.10 of the Complaint, these Defendants admit the first and third sentences, allege that in 1995 Reed Taylor desired to retire and have AIA Services redeem his stock, and deny each and every other allegation in paragraph 2.10 not otherwise admitted herein.

22. Answering paragraph 2.11 of the Complaint, these Defendants admit that AIA Insurance is a wholly owned subsidiary of AIA Services and that AIA Insurance is a lessee of the office building located at 111 Main Street, Lewiston, Idaho. These Defendants deny all other allegations in paragraph 2.11 of the Complaint not otherwise specifically admitted herein.

23. Answering paragraph 2.12 of the Complaint, these Defendants state that the agreements speak for themselves.

24. Answering paragraph 2.13 of the Complaint, these Defendants state that the documents speak for themselves, and deny all other allegations in paragraph 2.13 of the Complaint not otherwise specifically admitted herein.

25. Answering paragraph 2.14 of the Complaint, these Defendants admit that the Stock Redemption Agreement, Stock Pledge Agreement, and Security Agreement were authorized by the Board of Directors of AIA Services. These Defendants state that the agreements speak for themselves, and deny all other allegations in paragraph 2.13 of the Complaint not otherwise specifically admitted herein.

26. Answering paragraph 2.15 of the Complaint, these Defendants admit that in 1996 AIA Services and Plaintiff agreed to modify the Stock Redemption Agreement and executed the Stock Redemption Restructure Agreement, an Amended and Restated Stock Pledge Agreement, and an Amended and Restated Security Agreement. Those documents speak for themselves, and

these Defendants deny all other allegations in paragraph 2.15 of the Complaint not otherwise specifically admitted herein.

27. Answering paragraph 2.16 of the Complaint, these Defendants state that the agreements speak for themselves, the agreements were amended at a later time, and these Defendants deny all other allegations in paragraph 2.16 of the Complaint not otherwise specifically admitted herein.

28. Answering paragraph 2.17 of the Complaint, these Defendants state that the Amended Stock Pledge Agreement speaks for itself, and these Defendants deny each and every allegation in paragraph 2.17 of the Complaint not otherwise specifically admitted herein.

29. Answering paragraph 2.18 of the Complaint, these Defendants state that the Amended Stock Pledge Agreement speaks for itself. These Defendants admit that AIA Services did not post bonds or other security for the payment of the Promissory Note and deny all other allegations in paragraph 2.18 of the Complaint not specifically admitted herein.

30. Answering paragraph 2.19 of the Complaint, these Defendants state that the Amended Stock Pledge Agreement speaks for itself and deny all other allegations in paragraph 2.19 of the Complaint not otherwise specifically admitted herein.

31. Answering paragraph 2.20 of the Complaint, these Defendants state that the Amended Stock Pledge Agreement speaks for itself and deny all other allegations in paragraph 2.20 of the Complaint not otherwise specifically admitted herein.

32. These Defendants deny the allegations in paragraph 2.21 of the Complaint.

33. Answering paragraph 2.22 of the Complaint, these Defendants admit that Plaintiff was, during certain relevant times, the largest creditor of AIA Services, and deny all other allegations in paragraph 2.22 of the Complaint not otherwise specifically admitted herein.

34. These Defendants deny the allegations in paragraph 2.23 of the Complaint.

35. These Defendants deny the allegations in paragraph 2.24 of the Complaint.

36. These Defendants deny the allegations in paragraph 2.25 of the Complaint.

37. Answering paragraph 2.26 of the Complaint, these Defendants admit that Plaintiff claimed that AIA Services was in default, and these Defendants deny all other allegations in paragraph 2.26 of the Complaint not otherwise specifically admitted herein.

38. Answering paragraph 2.27 of the Complaint, these Defendants admit that Plaintiff had never attempted to accelerate any of the indebtedness due under the Promissory Note prior to December 12, 2006, admit that AIA Services continued to make interest payments in an agreed upon amount before and after the date of Plaintiff's original complaint, and deny all other allegations in paragraph 2.27 of the Complaint not otherwise specifically admitted herein.

39. Answering paragraph 2.28 of the Complaint, these Defendants state that the Amended Stock Pledge Agreement speaks for itself, and these Defendants deny each and every other allegation in paragraph 2.28 of the Complaint.

40. Answering paragraph 2.29 of the Complaint, these Defendants admit that Plaintiff attempted to schedule a special shareholder meeting for December 26, 2006, admit that no special shareholder meeting was held on that date, and deny each and every other allegation in paragraph 2.29 of the Complaint.

41. Answering paragraph 2.30 of the Complaint, these Defendants admit that the quoted words are part of one of the sentences of a letter from R. John Taylor to Plaintiff's legal counsel, and deny each and every allegation in paragraph 2.30 of the Complaint.

42. Answering paragraph 2.31 of the Complaint, these Defendants admit that Reed Taylor demanded a special shareholder meeting for February 5, 2007, admit that no special shareholder meeting was held on that date, deny that Reed Taylor had a right to call a meeting to vote AIA Insurance Shares, and deny each and every allegation in paragraph 2.31 of the Complaint not otherwise specifically admitted herein.

43. These Defendants deny the allegations in paragraph 2.32 of the Complaint.

44. Answering paragraph 2.33 of the Complaint, these Defendants admit that Reed Taylor executed a Consent in Lieu of Special Shareholder Meeting of AIA Insurance, and these Defendants deny each and every allegation in paragraph 2.33 of the Complaint not otherwise specifically admitted herein.

45. Answering paragraph 2.34 of the Complaint, these Defendants admit that AIA Insurance paid \$1,510,693.00 to purchase Series C Preferred Shares in AIA Services from Crop USA. These Defendants admit that AIA Services' 401(k) Plan held Preferred C shares. These Defendants deny all other allegations in paragraph 2.34 of the Complaint not otherwise specifically admitted herein.

46. Answering paragraph 2.35 of the Complaint, these Defendants admit that John Taylor purchased a parking lot and deny each and every allegation in paragraph 2.35 of the Complaint not otherwise specifically admitted herein.

47. These Defendants deny the allegations in paragraph 2.36 of the Complaint.

48. These Defendants deny the allegations in paragraph 2.37 of the Complaint.

49. Answering paragraph 2.38 of the Complaint, these Defendants admit that Reed Taylor executed a Consent in Lieu of Board Meeting on or around February 22, 2007 and that Defendants refused to recognize the Consent as binding on them. These Defendants deny all other allegations in paragraph 2.38 of the Complaint not otherwise specifically admitted herein.

50. These Defendants deny the allegations in paragraph 2.39 of the Complaint.

51. Answering paragraph 2.40 of the Complaint, these Defendants admit that Freeman and Duclos resigned as members of the Board of Directors of AIA Insurance and AIA Services, admit that John Taylor, as Chairman of the Board of Directors, appointed Connie Taylor and James Beck as directors, and deny all other allegations in paragraph 2.40 of the Complaint not otherwise specifically admitted herein.

52. These Defendants deny the allegation in paragraph 2.41 of the Complaint.

53. Answering paragraph 2.42 of the Complaint, these Defendants admit that Plaintiff has an interest as provided for in the Amended and Restated Security Agreement, which agreement speaks for itself, admit that Plaintiff has demanded that no funds in which he has a security interest should be used to pay the legal fees of any Defendant, but deny all other allegations in paragraph 2.42 of the Complaint not otherwise specifically admitted herein.

54. These Defendants deny the allegations in paragraph 2.43 of the Complaint.

55. Answering paragraph 2.44, these Defendants admit that Crop USA purchased Sound Insurance and deny all other allegations in paragraph 2.44 of the Complaint not otherwise specifically admitted herein.

56. Answering paragraph 2.45 of the Complaint, these Defendants admit that Global Travel was a tenant in AIA Insurance's office building and that Global Travel has relocated to a different office building, but these Defendants deny all other allegations in paragraph 2.45 of the Complaint not otherwise specifically admitted herein.

57. These Defendants deny the allegations in paragraph 2.46 of the Complaint.

58. These Defendants deny the allegations in paragraph 2.47 of the Complaint.

59. Answering paragraph 2.48 of the Complaint, these Defendants allege that AIA Service and AIA Insurance are and were being operated for the benefit of AIA Services and AIA Insurance and deny all other allegations in paragraph 2.48 of the Complaint not otherwise specifically admitted herein.

60. These Defendants deny the allegations in paragraph 2.49 of the Complaint.

61. These Defendants deny the allegations in paragraph 2.50 of the Complaint.

62. These Defendants deny the allegations in paragraph 2.51 of the Complaint.

63. These Defendants deny the allegations in paragraph 2.52 of the Complaint.

64. These Defendants deny the allegations in paragraph 2.53 of the Complaint.

65. These Defendants deny the allegations in paragraph 2.54 of the Complaint.

66. Answering paragraph 2.55 of the Complaint, these Defendants state that the Executive Officer's Agreement speaks for itself, and these Defendants deny all other allegations in paragraph 2.55 of the Complaint not otherwise specifically admitted herein.

67. These Defendants deny the allegations in paragraph 2.56 of the Complaint.

68. These Defendants deny the allegations in paragraph 2.57 of the Complaint.

69. These Defendants deny the allegations in paragraph 2.58 of the Complaint.

70. Paragraph 2.59 does not state any allegations against these Defendants to which a response is required. To the extent a response is required, these Defendants deny the allegations in paragraph 2.59 of the Complaint.

FIRST CAUSE OF ACTION
Breaches of Contract

71. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs.

72. Answering paragraphs 3.2 through 3.4 of the Complaint, these defendants state that the Promissory Note, Amended Stock Pledge Agreement, Amended Security Agreement, and Restructure Agreement speak for themselves, and these defendants deny all other allegations in paragraphs 3.3 through 3.4 of the Complaint not otherwise specifically admitted herein.

SECOND CAUSE OF ACTION
Fraudulent Transfers

73. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs of this Answer.

74. These Defendants deny all allegations in paragraphs 4.2 through 4.4 of the Complaint.

THIRD CAUSE OF ACTION
Misrepresentations/Fraud

75. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs of this Answer.

76. These Defendants deny all allegations in paragraphs 5.2 through 5.4 of the Complaint.

FOURTH CAUSE OF ACTION
Conversion

77. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs of this Answer.

78. These Defendants deny all allegations in paragraphs 6.2 through 6.3 of the Complaint.

FIFTH CAUSE OF ACTION
Alter Ego/Piercing Corporate Vail [sic]

79. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs of this Answer.

80. These Defendants deny all allegations in paragraphs 7.2 through 7.5 of the Complaint.

SIXTH CAUSE OF ACTION
Constructive Trust

81. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs of this Answer.

82. These Defendants deny all allegations in paragraphs 8.2 through 8.4 of the Complaint.

SEVENTH CAUSE OF ACTION
Director Liability

83. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs of this Answer.

84. These Defendants deny all allegations in paragraphs 9.2 through 9.4 of the Complaint.

EIGHTH CAUSE OF ACTION
Specific Performance

85. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs of this Answer.

86. These Defendants deny all allegations in paragraphs 10.2 through 10.4 of the Complaint.

NINTH CAUSE OF ACTION
Breach of Fiduciary Duties

87. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs of this Answer.

88. These Defendants deny all allegations in paragraphs 11.2 through 11.4 of the Complaint.

TENTH CAUSE OF ACTION
Breach of the Implied Covenant of Good Faith and Fair Dealing

89. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs of this Answer.

90. These Defendants deny all allegations in paragraphs 12.2 through 12.3 of the Complaint.

ELEVENTH CAUSE OF ACTION
Civil Conspiracy

91. These Defendants incorporate by reference their answers and denials set forth in the preceding paragraphs of this Answer.

92. These Defendants deny all allegations in paragraphs 13.2 through 13.3 of the Complaint.

PRAYER FOR RELIEF

93. Answering paragraphs 14.1 through 14.41, these Defendants deny that Plaintiff is entitled to any of the relief prayed for in his Complaint.

THIRD DEFENSE

On July 1, 1996, Plaintiff, AIA Services, and Donna J. Taylor entered into a Series A preferred Shareholder Agreement, which provides that no principal payments may be made by AIA Services to Plaintiff until the entire redemption price due Donna Taylor is paid in full. The redemption price due Donna Taylor has not been paid in full. Therefore, no principal payments are due to Plaintiff.

FOURTH DEFENSE

At different times since the written agreements were executed, Plaintiff and these Defendants have orally modified the written agreements. The modifications include, without limitation, an agreement that the interest payable to Plaintiff from AIA Services would be paid in installments of \$15,000 per month (together with the assumption of responsibility for other expenses). AIA Services has paid Plaintiff the sum of \$15,000 per month and has assumed responsibility for the other agreed expenses in accordance with the modified agreements since they were entered into, and Plaintiff has accepted those payments. These Defendants are not in default of the modified agreements.

FIFTH DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations, including Idaho Code §§ 5-216, 5-218, 5-224, 5-237 and 55-918.

SIXTH DEFENSE

Plaintiff is estopped from asserting his claims against these Defendants

SEVENTH DEFENSE

Plaintiff has waived his right to assert claims against these Defendants

EIGHTH DEFENSE

Plaintiff's claims against these Defendants are barred by the equitable doctrine of unclean hands.

NINTH DEFENSE

Plaintiff's claim in his THIRD CAUSE OF ACTION violates Idaho Rule of Civil Procedure 9(b).

TENTH DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

ELEVENTH DEFENSE

To the extent Plaintiff is attempting to state a claim for a shareholder's derivative action, Plaintiff's claims are barred for failure to give the required notice pursuant to Idaho Code § 30-1-742.

TWELFTH DEFENSE

Plaintiff's alleged damages are subject to the right of setoff.

THIRTEENTH DEFENSE

On July 1, 1996, AIA Services Corporation ("Services") and Reed J. Taylor executed a Stock Redemption Restructure Agreement, Amended and Restated Stock Pledge Agreement, and related documents restating the 1995 agreements with Reed J. Taylor whereby Services acquired all his outstanding common shares (613,494) in exchange for \$7.5 million and (i) three aircraft, (ii) elimination of \$570,000 owed to the Company, and (iii) miscellaneous furniture and fixtures.

Revenues of Services and its subsidiaries declined sharply between 1994 and 1996: \$36,200,324, \$10,996,753 and \$9,758,226, respectively.

The basis for the 1996 Stock Redemption Restructure Agreement and related Agreements was that Services and its subsidiaries depended on its ability to sell health and life insurance. Reed J. Taylor sold his controlling interest while Services was losing money and then continued on the Board of Directors and participated in decisions promoting the Company's decline. Neither party, in 1996, could foresee the precipitous decline of Services through government regulation and market change.

With the consent and knowledge of Reed J. Taylor as a member of the Board of Directors of Services:

(a) The Universe Life Insurance Company ("Universe") entered into a Stipulation and Order of Rehabilitation with the Idaho Department of Insurance in the District Court of the Fourth Judicial District of the State of Idaho ("District Court") on March 5, 1996.

(b) An Amended Plan of Rehabilitation was approved by the District Court on October 7, 1997. Effective December 1, 1997, through the Amended Plan of Rehabilitation, all of Universe's group health insurance certificate holders were transferred to Trustmark Insurance Company ("Trustmark").

(c) On December 4, 1998, the District Court issued an Order of Liquidation and placed Universe into liquidation, with assets and liabilities estimated to be \$16.1 million and \$14.3 million, respectively. A liquidator was appointed to wind down business and pay certificate holders, creditors, and shareholders.

Reed J. Taylor knew and understood that the health insurance business of Services depended upon retention of the policies in Universe and Centennial that were transferred to Trustmark, as well the continued ability to write new health insurance business.

By November 2001, Trustmark determined that it would no longer underwrite individual health insurance and disallowed all new sales.

Reed J. Taylor, based on his intimate involvement with Services, knew and understood that changes in legislative and regulatory framework affecting health insurance laws had substantially and permanently damaged Services' health insurance business.

While Reed J. Taylor was sales manager AIA Insurance's commissions declined every year.

Reed J. Taylor has been paid several million dollars in interest and other payments from a company that has suffered unforeseen market consequences and the loss of the consideration for the sale of his stock. Given the unforeseeable supervening consequences, the actions of Reed J. Taylor in the business and/or the substantial sums paid to him, it would be unconscionable to continue to enforce the contracts with Reed J. Taylor. Neither party could have foreseen the changes in regulation and attendant shrinking market of Services and loss of Universe and Centennial. In the alternative, Services is entitled to a setoff equal to the value of Universe at the time of signing the contract with Reed J. Taylor.

FOURTEENTH DEFENSE

Reed J. Taylor voluntarily relinquished and waived events of default under the Amended Security Agreement and Amended Pledge Agreement, including but not limited to, default or

breaches arising from or relating to financial statements, board memberships, or insolvencies or bankruptcies.

FIFTEENTH DEFENSE

Reed J. Taylor voluntarily relinquished the payment provision of this 1996 Promissory and accepted a modified monthly interest payment of \$25,000 and future payment of principal upon placement of \$60,000,000 in new business evidenced by his conduct, words and acquiesces.

SIXTEENTH DEFENSE

Reed J. Taylor is estopped from claiming a default or breach of the Amended Pledge Agreement or the Amended Security Agreement, including but not limited to alleged defaults related to or arising from financial statements, board membership, or insolvency or bankruptcy, as it would be unconscionable to allow Reed J. Taylor to assert such rights to default based on his prior positions and conduct.

SEVENTEENTH DEFENSE

Reed J. Taylor represented to AIA Services by his conduct and course of action and silence that he was excusing and waiving any breach of contract by accepting payments of \$25,000 a month since 2003; AIA Services relied upon Reed J. Taylor's representation and materially changed its position to its detriment.

RULE 11 STATEMENT

Defendants have considered and believe that they may have additional defenses but do not have information at this time to assert such additional defenses under Rule 11 of the Idaho Rules of Civil Procedure. Defendants do not intend to waive any such defenses and specifically

assert their intention to amend this Answer if, pending research and after discovery, facts come to light giving rise to such additional defenses.

FIRST COUNTERCLAIM BREACH OF FIDUCIARY DUTY

Defendants/Counterclaimants AIA Insurance, Inc. and AIA Services Corporation (hereinafter "AIA Services"), by way of counterclaim against Plaintiff/Counterdefendant Reed Taylor, allege and complain as follows:

1. In 1995, Plaintiff was the majority shareholder of AIA Services. AIA Services was the sole shareholder of AIA Insurance.
2. In 1995, AIA Services redeemed Plaintiff's interest in AIA Services through a corporate redemption of the Plaintiff's stock.
3. After the purchase of Plaintiff's stock, Plaintiff intentionally, as a major creditor of the Company, a Director, and Sales Manager of the Company, undertook a course of action which injured AIA Insurance and devalued the businesses of AIA Services. Plaintiff's intentional course of action included intimidating and interfering with the management and inducing AIA Insurance employees and agents to terminate their employment and contracts with AIA Insurance and to accept employment and contracts with Plaintiff and/or organizations controlled by him. Plaintiff, with the former employees and former agents of AIA Insurance, engaged in business competitive with AIA Insurance which seriously damaged the business and value of AIA Insurance and the value of the businesses of AIA Services.
4. Because of Plaintiff's interference with AIA Services' business relationships, AIA Services was unable to pay Plaintiff all of the amounts of money due at times due, prior to the amendment of the agreements. Before the agreements were amended in 2003, Plaintiff

threatened to sue AIA Services and to foreclose and take over AIA Insurance and threatened and coerced Defendants into employing friends and relatives of Plaintiff and paying Plaintiff's friends and relatives salaries and compensation substantially in excess of the value of their services. Plaintiff also told those friends and relatives that they were not obligated to report to or take direction from AIA's management.

5. Plaintiff has intentionally breached his fiduciary duty as a Director of Officer, damaging Defendants in amounts to be proved at trial.

6. Based on the conduct of Reed J. Taylor alleged in this First Counterclaim, Defendants will seek amendment of its prayer for relief and are entitled to punitive damages pursuant to I.C. 6-1604.

**SECOND COUNTERCLAIM
BAD FAITH BREACH OF IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

1. There is implied in every contract a covenant of good faith and fair dealing.

2. On July 1, 1996, AIA Services Corporation, Reed Taylor and Donna J. Taylor executed a Stock Redemption Restructure Agreement.

(a) The recitals of this Agreement provided "the Series A Preferred Shareholder would have her stock in company redeemed in accordance with a specified payment plan, and that certain payments to creditor under the original document would be subordinated to the company's obligation to pay Series A Preferred Shareholder. Concurrent with this Agreement, creditor, company and Series A Preferred Shareholder have entered into an agreement ("Series A Preferred Shareholder Agreement") which supersedes and replaces the Series A Preferred Shareholder Letter Agreements."

(b) According to Section 1.8 of the Agreement, a subordination agreement with the Series A Shareholder would be executed concurrently with the Agreement.

(c) The Parties executed the Series A Preferred Shareholder Agreement (Exhibit G) on July 1, 1996.

3. Payments to the Series A Preferred Shareholder by AIA Services are continuing on a monthly basis.

4. The Series A Preferred Shareholder has not declared a default in the payments to her under the 1996 subordination agreement.

5. Reed J. Taylor knew and understood in 1996 that the payment of principal to him on the \$6 million Note would be subordinated in full to the company's obligation to redeem the Series A Preferred Stock first.

6. In December 2006, Reed J. Taylor, without the consent or knowledge of AIA Services, persuaded Donna J. Taylor to execute a Subordination Agreement, whereby the debt owing to Donna Taylor from the sale of the Series A Preferred Shares to AIA Services would be subordinated to the debt owed by AIA Services to Reed J. Taylor.

7. On February 22, Reed J. Taylor executed a Consent in Lieu of Special Shareholder Meeting of AIA Services and allegedly removed John Taylor, JoLee Duclos and Bryan Freeman from the Board of Directors and appointed himself as sole Board member.

8. Reed J. Taylor then broke into the offices of AIA Services in the early morning of Sunday, February 25, 2007, and attempted to take over the offices and books and records of AIA Services.

9. Reed J. Taylor acted in bad faith and used the 2006 Subordination Agreement with Donna Taylor in order to manufacture an alleged default of non-payment of principal under the Stock Redemption Restructure Agreement, Amended Pledge Agreement, and Amended Security Agreement of 1996 to take over AIA Services.

10. Based on the conduct of Reed Taylor alleged in this Second Counterclaim, Defendants will seek amendment of its prayer for relief and are entitled to an award of punitive damages pursuant to IC § 6-1604.

THIRD COUNTERCLAIM BREACH OF CONTRACT

1. Defendants/Countclaimants reallege and incorporate by reference paragraphs 1-9 verbatim of the Second Counterclaim as if set forth in full herein.

2. As part of the consideration for the Stock Redemption Restructure Agreement of 1996, the parties, Reed Taylor, AIA Services, and Donna Taylor, agreed to subordinate the payment of principal on Reed Taylor's promissory note until the Series A Preferred Shareholder is paid in full.

3. Reed Taylor has breached the Stock Redemption Restructure Agreement and has damaged AIA Services.

4. AIA alleges that the 2006 subordination agreement should be voided and adjudged invalid, restoring the 1996 agreement as written.

FOURTH COUNTERCLAIM INJUNCTIVE RELIEF

1. On Sunday morning, February 25, 2007, without notice to any Defendants, Plaintiff and several other individuals entered the offices of AIA Insurance and AIA Services at 111 Main Street, Lewiston, Idaho.

2. Accompanying Plaintiff and conspirators was a locksmith whom Plaintiff directed to begin to change the locks on the offices of AIA Services and AIA Insurance for the purpose of preventing access to those offices by their current management and employees.

3. The action and conduct of Plaintiff and his associates constitute a trespass upon the property of AIA Services and AIA Insurance, which, if it had been successful, would have caused irreparable injury to both AIA Services and AIA Insurance.

4. Plaintiff should be enjoined from harassing and/or interfering with the management of AIA Insurance and AIA Services. Plaintiff should be enjoined from entering upon the premises of AIA Insurance and AIA Services without the express permission of these Defendants. Plaintiff should be enjoined from acting or attempting to act as a Director or officer of AIA Insurance. Plaintiff should be enjoined from harassing or annoying, directly or indirectly, any employee of AIA Services or AIA Insurance in person, by telephone, or by written communications.

FIFTH COUNTERCLAIM TRESPASS

1. In the early morning hours of Sunday, February 25, 2007, Plaintiff and several of his associates entered the offices of AIA Services and AIA Insurance without notice and without permission, which constitutes an intentional trespass on the property of AIA Services and AIA Insurance, which causes those corporations damages in amounts which will be proved at trial.

2. Based on the conduct described in the preceding counterclaim Plaintiffs are entitled to an award of punitive damages and will seek permission to amend its property for relief pursuant to I.C. 6-1604.

ATTORNEYS' FEES

These Defendants have been required to retain the services of Hawley Troxell Ennis & Hawley LLP and are entitled to an award of attorneys' fees pursuant to Idaho Code §§ 12-120, 12-121, and/or other applicable law.

NOTICE OF INTENT TO AMEND

These Defendants hereby give notice of their intent to amend this Answer and Counterclaim to add additional claims, defenses and counterclaims, including a claim for punitive damages, as discovery is conducted.

PRAYER FOR RELIEF

WHEREFORE, these Defendants request the Court:

1. To dismiss the Fifth Amended Complaint with prejudice;
2. To award these Defendants damages on their Counterclaims in the amounts to be proven at trial for trespass and breach of contract;
3. To enter a judgment voiding the 2006 subordination agreement;
4. To enter an injunctive relief as set forth in these Defendants' Fourth Counterclaim;
5. To enjoin this Plaintiff from harassing and/or interfering with the management of AIA Insurance and AIA Services, and to enjoin the Plaintiff from entering upon the premises of AIA Insurance and AIA Services without the express permission of these Defendants, and to enjoin the Plaintiff from acting or attempting to act as a Director or officer of AIA Insurance, and

to enjoin the Plaintiff from harassing or annoying, directly or indirectly, any employee of AIA Services or AIA Insurance in person, by telephone, or by written communications.

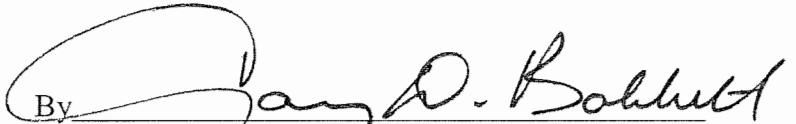
6. For punitive damages as may be allowed.
7. For all costs and attorney fees as provided by contract or statute, including Idaho Code § 12-120 and § 12-121 or other applicable law.
8. For such other and further relief as the Court may find just and proper in the circumstances.

DEMAND FOR JURY TRIAL

AIA Services Corporation and AIA Insurance, Inc. hereby demand a trial by a jury of twelve (12).

DATED THIS 21 day of February, 2008.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By 

Gary D. Babbitt ISB No. 1486
Attorneys for Defendants AIA Services
Corporation, AIA Insurance, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of February, 2008, I caused to be served a true copy of the foregoing AIA SERVICES CORPORATION'S AND AIA INSURANCE INC.'S ANSWER TO PLAINTIFF'S FIFTH AMENDED COMPLAINT, COUNTERCLAIMS, AND DEMAND FOR JURY TRIAL by the method indicated below, and addressed to each of the following:

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[Attorneys for Plaintiff]

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and Corrine Beck]

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Attorneys for AIA Services Corporation,
AIA Insurance, Inc., and CropUSA

FILED

2008 FEB 25 AM 10 05

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

vs.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an
Idaho corporation; R. JOHN TAYLOR and
CONNIE TAYLOR, individually and the
community property comprised thereof;
BRYAN FREEMAN, a single person; JOLEE
DUCLOS, a single person; CROP USA
INSURANCE AGENCY, INC., an Idaho
Corporation; and JAMES BECK and
CORRINE BECK, individually and the
community property comprised thereof,

Defendants.

Case No. CV-07-00208

MEMORANDUM IN OPPOSITION TO
REED TAYLOR'S MOTION TO
DISSOLVE PRELIMINARY
INJUNCTION AGAINST REED
TAYLOR

AIA SERVICES CORPORATION, an Idaho
corporation; and AIA INSURANCE, INC., an

MEMORANDUM IN OPPOSITION TO REED TAYLOR'S MOTION TO DISSOLVE
PRELIMINARY INJUNCTION AGAINST REED TAYLOR - 1

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Idaho corporation,)
)
Counterclaimants,)
vs.)
)
REED J. TAYLOR, a single person,)
)
Counterdefendant.)
)

I.

INTRODUCTION

On February 8, 2008, the Court granted Reed Taylor's Motion for Partial Summary Judgment as to the issue of Default on the Promissory Note. On February 21, 2008, Defendants AIA Services and AIA Insurance, Inc. (Services) filed their Answer to the Fifth Amended Complaint along with Counterclaims against Reed J. Taylor. AIA also filed a Motion and Memorandum of Law in Support of Motion for Reconsideration and Clarification relating to the February 8, 2008, Order of this Court.

II.

ARGUMENT

The Motion and Memorandum for Reconsideration and Clarification present three compelling reasons for reversal of the February 8, 2008, Order of this Court. First, the Court's ruling of February 8, 2008, does not consider the effect of the Series A Preferred Shareholder Agreement dated July 1, 1996 ("Agreement"), which is an intricate part of the Stock Redemption Restructure Agreement limiting the Plaintiff's ability to declare default and collect, on the \$6 million principal promissory note. The Agreement requires that the Series A Preferred Stock must be completely redeemed prior to any payment of the \$6 million principal. This is a complete subordination provision prohibiting any principal payment.

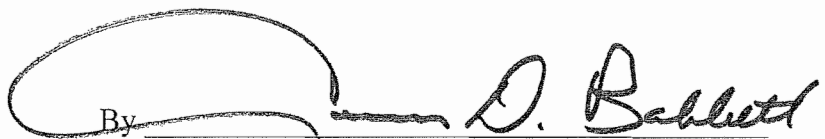
Second, summary judgment was inappropriate because the Court failed to discuss in its February 8 Order express or implied waiver. Express and implied waiver is a jury question and is ordinarily a question of fact. Services submits that there are substantial factual issues involving express or implied waiver which require the reversal of the February 8 Order.

Finally, Services submits that there are substantial grounds for reversal of the February 8 Order based on modification. Contractual modification of the Promissory Note is supported by substantial evidence of both consideration and certainty of the terms of modification, which compel reversal of the February 8, 2008 Order of this Court.

In summary, Services submits that the February 8 Order should be reversed and set aside for any or all of the preceding arguments in Services' Motion for Reconsideration and Clarification. Consequently, the Motion to Dissolve the Preliminary Injunction Against Reed Taylor is premature in light of the Motion to Reconsider and for Clarification.

RESPECTFULLY SUBMITTED THIS 21st day of February, 2008.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By  Gary D. Babbitt

Gary D. Babbitt ISB No. 1486
Attorneys for AIA Services Corporation,
AIA Insurance, Inc., and CropUSA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of February, 2008, I caused to be served a true copy of the foregoing MEMORANDUM IN OPPOSITION TO REED TAYLOR'S MOTION TO DISSOLVE PRELIMINARY INJUNCTION AGAINST REED TAYLOR by the method indicated below, and addressed to each of the following:

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Attorneys for AIA Services Corporation and
AIA Insurance, Inc.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

REED J. TAYLOR, a single person,

Plaintiff,

vs.

AIA SERVICES CORPORATION, an Idaho
corporation; AIA INSURANCE, INC., an
Idaho corporation; R. JOHN TAYLOR and
CONNIE TAYLOR, individually and the
community property comprised thereof;
BRYAN FREEMAN, a single person; JOLEE
DUCLOS, a single person; CROP USA
INSURANCE AGENCY, INC., an Idaho
Corporation; and JAMES BECK and
CORRINE BECK, individually and the
community property comprised thereof,

Defendants.

AIA SERVICES CORPORATION, an Idaho

Case No. CV-07-00208

MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
RECONSIDERATION AND
CLARIFICATION AND, IN THE
ALTERNATIVE, REQUEST FOR
CERTIFICATION FOR
INTERLOCUTORY APPEAL

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
RECONSIDERATION AND CLARIFICATION AND, IN THE
ALTERNATIVE, REQUEST FOR CERTIFICATION FOR
INTERLOCUTORY APPEAL - 1

FILED

2008 FEB 25 AM 10 05

PATTY O. WEEKS
CLERK OF THE DIST. COURT

DEPUTY

1934

corporation; and AIA INSURANCE, INC., an))
Idaho corporation,)
)
Counterclaimants,)
vs.)
)
REED J. TAYLOR, a single person,)
)
Counterdefendant.)
)
)
)

I. INTRODUCTION

Defendants, AIA Services Corporation and AIA Insurance Inc., by and through their counsel of record, Hawley Troxell Ennis & Hawley LLP, submit this Memorandum of Law in Support of Motion for Reconsideration and Clarification of the grant of partial summary judgment in favor of Plaintiff Reed Taylor (“Reed”) entered on February 8, 2008 (the “Order”). Defendants requests that upon reconsideration of the facts and law presented to the Court, that this Court vacate the entry of partial summary judgment in favor of Plaintiff and allow the parties to proceed to a jury trial.

II. FACTS

This memorandum will not attempt to repeat the factual background with which this Court is familiar. This memorandum incorporates by reference Defendants’ factual statements in its Opposition to Plaintiff’s Motion for Summary Judgment and will set forth in the Argument section only the facts most relevant to the arguments set forth herein.

III. ARGUMENT

A. The Order Granting Summary Judgment Does Not Consider The Effect Of The Series A Preferred Shareholder Agreement Which Is An Integral Part Of The Stock Redemption Restructure Agreement.

The Court's Order of February 8, 2008, cites as a cornerstone for its opinion the 1996 Stock Redemption Restructure Agreement (p. 2). In finding a default with regard to both the

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION
AND CLARIFICATION AND, IN THE ALTERNATIVE, REQUEST FOR

\$6,000,000 principal and interest, the Court has, in effect, rewritten the 1996 Redemption Restructure Agreement, as no principal is due and owing under that agreement.

The Court's ruling of February 8, 2008, does not consider the effect of the Series A Preferred Shareholder Agreement (the "Shareholder Agreement") dated July 1, 1996 on AIA Services Corporation's obligation to make payments to Plaintiff under the \$6,000,000 Promissory Note (the "Note"). The Shareholder Agreement is an integral part of the 1996 Stock Redemption Restructure Agreement. *See* Affidavit of Gary G. Babbitt ("Babbitt Aff."), Ex. A. In Recital F of the Stock Redemption Restructure Agreement, the parties stated:

Concurrent with this Agreement, Creditor, Company, and Series A Preferred Shareholder have entered into a new agreement ("Series A Preferred Shareholder Agreement") which supersedes and replaces the Series A Preferred Shareholder Letter Agreements.

The Stock Redemption Restructure Agreement in Section 1.8 next incorporates the Series A Preferred Shareholder Agreement, stating:

Concurrent with the execution of this Agreement, Company and Creditor shall have entered the Series A Shareholder Agreement in the form attached hereto as Exhibit G. Such Agreement shall supersede and replace all of the Series A Shareholder Letter Agreements.

The Shareholder Agreement, to which Reed Taylor ("Reed"), Donna Taylor (as the holder of the Series A Preferred Stock) and AIA Services were parties, modifies the Note by prohibiting AIA Services from making any principal payment to Reed until the Series A Preferred Stock is completely redeemed. That has not happened. Therefore, in order to fully ascertain AIA Services' obligations under the Note, the Court should consider the Note in conjunction with the Shareholder Agreement.

The Shareholder Agreement modifies AIA Services' obligations under the Note such that the Company is prohibited from making principal payments to Plaintiff until the Series A Preferred Stock has been completely redeemed:

Payment of principal to Creditor on the \$6M Note (whether at maturity or at any earlier time in accordance with any right of prepayment) shall be subordinated to payment in full of Company's obligation to redeem the Series A Preferred Stock. **Company shall not pay any principal on the \$6M Note until the Series A Preferred Stock is completely redeemed** (provided, however, that this limitation shall not preclude Company from exercising any contractual or equitable right of offset against the principal of the \$6M Note.)

Exhibit B, Section 3 (emphasis added).

This "complete" subordination provision prohibits any principal payment on the subordinated debt at any time while the senior debt remains outstanding. *Culp v. Tri-County Tractor, Inc.*, 112 Idaho 894, 897 (Ct. App. 1987) (holding that the failure to make a payment prohibited by a complete subordination provision cannot constitute a default). In *Culp*, the junior creditor sued the debtor for failure to make timely interest payments on outstanding debt secured by notes. The court held that the complete subordination of the junior creditor's interest prevented a finding that the debtor's failure to perform under the note could be an event of default. *Id.* at 897. The court held that the failure to make a payment prohibited by a subordination agreement cannot be characterized as a default, and absent a default there is no basis for suit or for the entry of judgment in favor of the junior creditor. *Id.* at 898. The Supreme Court of Idaho agrees with the Court's finding in *Culp* and has held that when one debt is senior to another debt in priority of payment, the inferior debt may not be paid ahead of the senior debt. *Blickenstaff v. Clegg*, 140 Idaho 572, 580 (2004).

In this case, the Series A Preferred Stock has not been fully redeemed. *See* John Taylor Aff., ¶ 6, Ex. C. Given that the Shareholder Agreement expressly prohibits the AIA Services from making payments under the Note until the Series A Preferred Stock has been fully redeemed, AIA Services' failure to perform such a prohibited act cannot be treated as an event of default. As a result, AIA Services cannot be in default under the Note for nonpayment of principal, and this court should vacate its entry of partial summary judgment in favor of Plaintiff.

Furthermore, the Shareholder Agreement provides unlimited priority to the Series A Preferred Shareholder such that Plaintiff cannot claim that he is entitled to principal payment under the Note. Absent express language limiting the priority status of the Series A Preferred Shareholder, the law will impose no limits. *Provident Federal Savings and Loan Association v. Idaho Land Developers*, 114 Idaho 453, 456 (Ct. App. 1988). If Plaintiff intended to limit the priority given to the Series A Preferred Shareholder, he should have insisted on the inclusion of express conditions in the Shareholder Agreement which provide for such limitation. *Id.* However, absent such language, the interests of the Series A Shareholder maintain priority over Plaintiff's to right payment of principal in the Note. As a result, Plaintiff is not entitled to payment of principal under the Note until the Company's obligation to redeem the Series A Preferred Stock has been completely satisfied.

It is anticipated that Reed may attempt to escape the clear language of the Series A Shareholder Agreement by arguing that Reed and Donna Taylor have unilaterally modified the Series A Shareholder Agreement. On December 1, 2006, Reed and Donna Taylor executed an agreement without the consent or knowledge of AIA, purportedly subordinating Donna Taylor's debt to Reed's Note. *See* John Taylor Aff., Ex. D. This agreement is void and unenforceable as it attempts to amend the 1996 Restructure Agreement without the consent of AIA Services.

The Shareholder Agreement specifically provides that it cannot be modified without the written consent of all parties to the Shareholder Agreement:

No provision of this Agreement may be amended, modified, waived, or supplemented, except by a writing signed by all parties to this Agreement.

See Id at Ex. B (emphasis added).

This attempt by two parties to unilaterally modify a three-party contract is void and cannot be relied upon to escape the effect of the Series A Shareholder Agreement. Indeed, this purported subordination agreement constitutes a material breach of the 1996 Stock Redemption Structure Agreement.

B. Summary Judgment Is Not Appropriate Because There Exist Material Issues Of Fact As To Whether Reed Waived Certain Rights Under The Note

Summary judgment is not appropriate in this case because there is a material issue of fact as to whether Reed has waived any right to declare a default under the Note until the companies have reached \$60 million in new business placements. The waiver issue was raised as an affirmative defense in AIA's answer to each version of Plaintiff's complaint, and the issue was briefed in opposition to Plaintiff's motion for summary judgment, but the waiver issue was not addressed by the Court in granting Plaintiff's motion for summary judgment.

Waiver is the voluntary relinquishment of a known right. *Minidoka County v. Krieger*, 88 Idaho 395, 411, 399 P.2d 962, 972 (1965). Waiver consists of two elements: "direct and unequivocal conduct indicating a waiver," and (2) "reliance by the party seeking to assert a waiver." *Idaho Migrant Council*, 110 Idaho 804, 806, 718 P.2d 1242, 1244 (Ct. App. 1986).

1. Whether A Party Has Waived Its Rights Is An Issue Of Fact For The Jury

The question of whether Reed waived his right to declare a default under the Note is a question of fact for the jury, not a question of law for the Court. *See, e.g., Riverside*

Development Co. v. Ritchie, 103 Idaho 515, 518, 650 P.2d 657, 660 (1982) (“The existence of waiver ordinarily is a question of fact, and if there is any substantial evidence in the record to support a waiver it is for the trier of fact to determine whether the evidence establishes such a waiver.”). Thus, “[i]t is within the province of the trier of fact to determine whether the evidence in a particular case constitutes a waiver.” *C. I. T. Corp. v. Hess*, 88 Idaho 1, 9, 395 P.2d 471, 475-76 (1964). Here, there is substantial evidence that Reed waived his right to declare a default under the terms of the promissory note, and the issue must be determined by a jury.

Notably, Plaintiff misconstrues this as an “implied” waiver case supported only by Reed’s silence in accepting late payments. See Plaintiff’s Reply in Support of Motion for Summary Judgment, p. 19 (citing *Jones v. Maestas*, 108 Idaho 69, 71 (Ct. App. 1985) for the proposition that “[t]he doctrine of implied waiver by silence is disfavored and waiver will only be inferred from a clear and unequivocal act manifesting an intent to waive.”). As an initial matter, Defendants assert both express and implied waiver. Waiver of contractual provisions can be either express – written or oral – or implied by conduct. See *Selective Builders, Inc. v. Hudson City Sav. Bank*, 349 A.2d 564, 567 (N.J. Super. 1975) (“It is well established that one may waive the delay in the performance of a contract whether time be of the essence or not. This waiver may be expressed or implied by written or oral agreement or by conduct indicating an intention to waive.”); see also *Moore v. Mutual of Enumclaw Ins. Co.*, 855 P.2d 626, 630 (Or. 1993) (“Under general contract law, a party to a written contract can waive a provision of that contract by conduct or by oral representation”).

2. Reed Voluntary Waived His Rights Under The Note

Defendants do not simply assert that Reed waived provisions of the Note by silence. Rather, Defendants assert that Reed expressly stated that he would accept reduced interest

payments of \$25,000 per month without declaring a default of the Note or the related Stock Redemption Restructure Agreement. Reed further expressly stated that he would not declare a default with regard to the \$6 million principal until AIA and CropUSA reached \$60 million in new business placements. *See* John Taylor Aff., ¶ 9. While Reed may deny making such an express verbal waiver, these facts must be considered true for purposes of summary judgment. It is for the jury to decide whether to believe John Taylor's ("John") testimony that Reed made these verbal statements of waiver or whether to believe Reed's testimony that he did not make such statements. *See Riverside Development Co. v. Ritchie*, 103 Idaho at 518.

In addition to the express verbal waiver, Reed's conduct both lends credibility to that verbal waiver and creates a material issue of fact as to an implied waiver by conduct. The original terms of the Note provided for monthly interest payments of \$41,500 and payment of the entire principal by August 1, 2005. By March 2003, AIA was no longer able to make these interest payments. *See* John Taylor Aff., ¶ 8. AIA Services was in default, and Reed was continuously threatening to declare a default and pursue his rights under the Note. Reed certainly could have declared a default at that time, but he chose not to. Rather than declare a default and pursue his remedies at that time, Reed agreed to waive his rights under the Note. Under this waiver, Reed agreed to receive only \$25,000 per month in interest. Reed's conduct shows that he continued to act consistent with this waiver. As of March 2003 and all of the way through the August 2005 principal due date, AIA paid the \$25,000 every month, and Reed accepted it every month without complaint. Reed did not provide any notice of default, and

Reed did not ever give any written notice that he was accepting the payments without waiver.

See id. at ¶ 10.¹

Then, even after August 1, 2005, the date on which the principal would have been due if not for Reed's waiver, Reed did not give any notice of default. Instead, Reed continued to accept the reduced interest payments for another year and a half. Reed still did not complain about the reduced interest payment, or even the failure to pay the \$6,000,000 principal when due, and Reed still did not provide any written notice that his continued acceptance of payments was not a waiver. Reed did not provide any notice of default until December 12, 2006, almost a year and a half after the principal would have been due if not for Reed's express waiver. This evidence is more than sufficient to create a material issue of fact as to whether Reed intentionally waived his rights under the Note. *See* 17A AM. JUR. 2D *Contracts* § 636 ("An unexplained delay in enforcing a contract may constitute evidence of waiver and acquiescence in the manner of the other party's performance."); *Callahan v. Cox*, 631 S.E.2d 405, 408 (Ga. App. 2006) (where there is "evidence of acceptance by a creditor of repeated, late, irregular payments . . . an issue of fact remains as to whether White waived the note's requirement for payment by the fifteenth of each month."); *Seismic & Digital Concepts, Inc. v. Digital Resources Corp.*, 590 S.W.2d 718, 721 (Tex. App. 1979) ("Waiver of strict performance may be inferred from the circumstances or course of dealings between the parties. . . A waiver may result from one party's express or

¹ Reed eventually did provide a written notice that "[m]y acceptance of any partial payments should not be construed as a waiver of AIA Services Corporations' default under the \$6,000,000 promissory note." *See* Preliminary Injunction Hearing, Ex. AH. This notice, however, did not come until February 6, 2007, after Reed had reneged on his waiver and filed suit against AIA. This after-the-fact denial of waiver evidences Reed's knowledge that he would have provided a similar denial of waiver notice if he had not really waived his

implied assent to the continued performance of the other party without objection to the delay.”). *Williamson v. Smith*, 74 Idaho 79, 256 P.2d 784 (1953) (“Where a contract for sale of real estate makes time of the essence, and provides for a forfeiture of the vendee's rights for failure on his part to make payments at certain times, a continued course of conduct on the part of the vendor in failing to declare a forfeiture, thereby leading the vendee to believe that the vendor waives a strict compliance with the terms of the contract, works a waiver of the vendor's right to declare a forfeiture, unless and until he gives the vendee reasonable notice of his intention to do so, and a reasonable opportunity to make the delinquent payments.”).

In addition to Reed’s conduct explained above, there is additional evidence that demonstrates Reed’s waiver. On May 27, 2004, John, on behalf of AIA, wrote a letter to Donna Taylor, to which AIA Services owed approximately \$740,000 at that time under its agreement to redeem her Series A preferred shares. *See* John Taylor Aff., ¶ 13; Ex. E. At that time, Donna Taylor had expressed concerns about AIA’s ability to redeem her Series A Preferred Shares in light of its other financial obligations, including Reed’s Note. *Id.* John explained that AIA would, “increase your payments in June [2004] and will increase them again as soon as CropUSA is funded.” In the May 27, 2004 letter, John stated:

I will also tell you that I have made sure that no principal payments or additional interest payments have been made to Reed during this period of reorganization. You may not know, but Reed also took a 65% cut in his monthly payment for these last several years so that we would have enough cash flow to get this reorganized.

Id.

rights and it further demonstrates that he knew his actions (and express verbal promises) had already effectuated a waiver.

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This letter was not a secret to Reed. Rather, Reed not only knew about the letter, but helped draft it. The payments to Donna were pursuant to the Series A Shareholder Agreement – a contract to which AIA, Donna Taylor, and Reed were all parties. For that reason, Reed was intricately involved in the payments to Donna Taylor and any correspondence related to those payments. *See* John Taylor Aff., ¶ 14. It was John’s practice to provide Reed with a draft of all correspondence to Donna Taylor prior to sending it to her. *Id.* If Reed had comments on the correspondence he would provide those comments to John. *Id.* It was also John’s practice to provide Reed with a copy of the final version of correspondence to Donna Taylor. *Id.* Despite the fact that the letter expressly states that Reed “took a 65% cut in his monthly payment for these last several years” (\$25,000 is approximately 65% of \$41,500 monthly payments required under the Note), Reed remained silent and did not deny the truthfulness of John’s statement. This is further evidence of Reed’s voluntary waiver of his rights under the Note that creates a material issue of fact precluding summary judgment.²

Finally, while at first blush one might question why Reed would voluntarily waive his rights under the Note, a more careful analysis of the situation makes it clear why Reed would do so. Reed did not waive his rights out of the kindness of his heart, but did so because it was in his financial interest to do so.

As of March 2003, AIA was unable to make the full interest payments to Reed. AIA had missed multiple payments and was in default under the terms of the Note. *See* John Taylor Aff.,

² Even if Reed denies receiving a copy of the letter, this issue of fact must be resolved in AIA’s favor for purposes of summary judgment. Notably, the May 27, 2004 letter was introduced by Reed as an exhibit at the recent deposition of John Taylor. This letter has not been provided by AIA to Reed in the course of this litigation. Thus, Reed’s possession of the letter gives rise to the inference that he received it on or around May 27, 2004.

¶ 8. Given Reed's continued work for AIA and his intimate familiarity with AIA's financial situation, loss of its health insurance underwriter, budgets, and business plans, Reed knew that AIA could not make the full interest payments and would not be able to pay off the principal balance of the Note on August 1, 2005. Reed also knew that if he exercised his right to declare a default under the Note his remedy would be incomplete. If Reed declared a default in March of 2003, he may have been able to take over AIA Insurance, but he would not have been able to recover the entire principal balance of the Note and accrued interest. In fact, on multiple occasions prior to March of 2003, John offered to voluntarily turn AIA Insurance over to Reed. *Id.* 11. Reed, however, told John that he did not want AIA Insurance, but instead wanted to figure out a way to be paid in full. Reed decided that the way to ultimately be paid in full was for AIA to work with CropUSA to build up a combined agency force. *Id.*

When the parties entered into the Note and the subsequent 1996 Stock Redemption Restructure Agreement, AIA had a thriving income stream from its health insurance products, which would provide the revenue to pay off Reed's Note. However, subsequent to 1996, AIA's health insurance revenues declined substantially due to government regulation of health insurance and other market changes. *Id.* at 12. In 2001, Trustmark Insurance Company, the company that underwrote AIA's individual health insurance products, determined that it would no longer underwrite individual health insurance and disallowed all new sales. Thus, AIA's revenues were limited to renewal premiums, unless AIA could find a new health insurance product to sell. Given the change in regulation of health insurance, AIA's ability sell a new health insurance product was severely hindered, which resulted in the attendant inability to bring in revenues sufficient to finance the payoff of Reed's Note. Understanding this to be the case, Reed directed John and AIA to work with CropUSA to build up a combined agency force of

independent sales agents. This would allow revenues of both AIA and CropUSA to increase, which would allow the companies to finance the payoff of Reed's Note. *Id.*

Thus, rather than exercise his right to declare a default, Reed waived his rights in order to ultimately have a chance of being paid in full. By waiving his rights instead of exercising them, Reed was able to continue receiving \$25,000 per month in interest payments. Reed received well over \$1 million in interest payments over the next three years. Also, rather than exercise his rights to declare a default of the principal that would have been due on August 1, 2005, Reed instead continued working for AIA and CropUSA in an attempt to build the combined agency force and build the businesses in an effort to reach a point where Reed could be paid in full.

The jury must be permitted to hear the evidence of Reed's waiver, understand the reasons why Reed decided to waive his rights, and ultimately decide whether Reed waived his rights under the Note.

3. AIA Relied On Reed's Waiver

In addition to the above showing that Reed voluntarily and intentionally waived his rights under the Note, there is substantial evidence that AIA acted in reliance on that waiver. Reed waived his rights under the Note because AIA could not pay off the Note on its own. Reed instructed John and AIA to work with CropUSA to build up a joint agency force, which would allow the combined companies to finance a payoff of Reed's Note. Under this waiver, AIA would be allowed to make reduced monthly interest payments of \$25,000 and Reed would not require payment of the principal until the companies reached \$60 million in new business placements. AIA acted in detrimental reliance on this waiver. As explained above, after Trustmark stopped underwriting AIA's health insurance product, the only way for AIA to have the revenue to pay off Reed's Note would be for AIA to develop a new health insurance product.

However, when AIA attempted to pursue new health insurance products, Reed (who was sales manager of both AIA Insurance and CropUSA) insisted that AIA not develop a new health insurance product and that the companies instead work together to build up a joint sales agency and focus more on the sale of Crop insurance.

AIA detrimentally relied on Reed's waiver in many ways. For example, in 2004 AIA explored the possibility of selling a new line of health insurance products through American Select Insurance Company. American Select provided AIA with a Producer Agreement and Master Marketing Organization Commission Supplement. *See John Taylor Aff., Ex. F.* AIA flew people to Denver, Colorado, for training with American Select. AIA believed that these new health insurance products would provide AIA with substantial revenue, which would also help AIA finance the payoff of Reed's Note. However, Reed insisted that AIA not pursue this new line of health insurance products. Instead, Reed insisted that the companies focus on building up the joint sales force and on the sale of crop insurance through CropUSA. Because of Reed's insistence, and in reliance on Reed's waiver of his right to declare a default until the companies had reached \$60 million in new business placements, AIA elected not to sell this new health insurance product. This decision not to sell new health insurance products left AIA without a revenue source to finance the payoff of Reed's Note. AIA would not have abandoned the American Select product if not for Reed's insistence and if not for Reed's waiver. *See id.* at ¶ 15.

AIA further detrimentally relied on Reed's waiver by ceasing its efforts to obtain financing to pay off Reed's Note. Prior to March 2003, AIA made several efforts to obtain financing to pay off Reed's Note. Reed, himself, also made efforts to obtain financing on behalf of AIA. In reliance on Reed's express waiver that he would not require payment of principal (or

declare a default) until the companies reached \$60 million in new business placements, AIA ceased its efforts to obtain financing on its own. Instead AIA focused on its efforts to build up the joint agency force with CropUSA, which would ultimately enable the companies to increase their revenues and obtain financing to pay off Reed's Note. AIA would not have ceased its efforts to obtain financing if not for Reed's waiver. *Id.* at ¶ 16.

AIA also detrimentally relied on Reed's waiver by guaranteeing a loan from Zions Bank (Idaho) to CropUSA in 2005. This loan replaced a prior credit facility with Private Bank of Minnesota, which was initiated in 2002. The Zions Bank loan funded CropUSA's share of operating expenses through 2005. The Zions bank facility of \$2,000,000, which concluded in 2006, was based on the commissions receivable for crop insurance policies. AIA further detrimentally relied on Reed's waiver by guaranteeing a \$15,000,000 line of credit from Lancelot to CropUSA. Reed alleges that AIA's actions in guaranteeing the Lancelot line of credit constitutes a fraudulent transfer. However, the truth is that AIA only did so because of Reed's waiver and insistence that AIA work with CropUSA to build up a joint agency force and thereby obtain a larger facility as the way to pay Reed's Note off in full. AIA guaranteed the Lancelot line of credit as a way to have a financing source that was large enough to ultimately pay off Reed's Note in full. AIA would not have guaranteed the Lancelot line of credit if not for Reed's waiver. By guaranteeing the Lancelot line of credit, AIA increased its contingent liabilities, which negatively affects AIA's ability to obtain other financing, including financing to pay off Reed's Note. *See id* at ¶ 17.

AIA also altered its payments to Donna Taylor in reliance on Reed's waiver. As explained above, John Taylor sent a letter to Donna Taylor explaining that "Reed took a 65% cut in his monthly payment." *Id.* at Ex. E. Reed knew of this letter, and did not ever challenge its

accuracy. Part of that letter states that AIA would increase its payments to Donna pursuant to the Series A Shareholder Agreement beginning in June 2004. As alluded to in that letter, in June 2004 AIA increased its monthly payments to Donna from \$4,000 per month to \$10,000 per month. These increased payments to Donna Taylor left AIA with less money to pay Reed pursuant to the original terms of the Note. AIA would not have increased its payments to Donna Taylor if not for Reed's waiver of his rights under the Note. *Id.* at ¶ 18.

Finally, AIA allowed Reed to stay on as sales manager of both AIA Insurance and CropUSA in reliance on Reed's waiver. Over the last several years Reed became increasingly disruptive and counterproductive to both AIA Insurance and CropUSA. Reed causes significant contention in the office, he increasingly disobeyed instructions from management, and he insisted that AIA take actions that AIA management disagreed with (including abandoning the new American Select health insurance product). However, AIA allowed Reed to maintain his sales manager position with AIA and CropUSA in reliance on Reed's waiver and agreement to defer payment of the Note's principal until the companies reach \$60 million in new business placements and Reed's insistence that he be allowed to help the companies reach their goals. If not for Reed's waiver, AIA and CropUSA would have terminated Reed's involvement with both companies. *Id.* at ¶ 19.

Each of the above are examples of how AIA altered its position in reliance on Reed's waiver, each leaving AIA in a worse off position for purposes of complying with the original terms of the Note.

C. The Modification Is Supported By Consideration Or Promissory Estoppel As A Substitute For Consideration.

The Court rejected Defendants' assertion that the parties modified the terms of the Note.

In rejecting the modification as a matter of law, the Court concluded that the modification lacked

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consideration and that its terms were not sufficiently definite. Defendants respectfully submit that each of these conclusions is incorrect.

1. Consideration

In granting Plaintiff's motion for summary judgment, the Court concluded that the modification of the Note lacked consideration. In reaching this conclusion, the Court relied on the "preexisting duty rule" under which "[t]he promise of a payment of a debt already due is not sufficient consideration for the promise of a creditor to forbear or extend the time of payment." Order, p. 9 (citing *O'Brien v. General Motors Acceptance Corp.*, 362 P.2d 455 (Wyo. 1961)). Essentially, the Court concluded that Reed Taylor did not receive any benefit from the oral modification. This conclusion is incorrect.

Consideration to modify the terms of a contract can come in the form of any benefit to the creditor or any detriment to the debtor. *Rule Sales and Service, Inc. v. U.S. Bank Nat. Ass'n*, 133 Idaho 669, 674, 991 P.2d 857, 862 (Ct. App. 1999). The adequacy of the consideration is in the discretion of the parties, however slight the value to the promisor or the detriment to the promisee. See 17A AM. JUR. *Contracts* § 518 (2d ed. 2004). Thus, as long as there is some minimal consideration, "it is the established rule that Courts will not inquire into the adequacy or sufficiency of the consideration bargained for by the parties." *Enders v. Wesley W. Hubbard & Sons, Inc.*, 95 Idaho 590, 593, 513 P.2d 992, 995 (1973).

Under the original terms of the \$6,000, 000 Note, Reed was to receive interest payments of \$41,500 per month only until August 1, 1995, at which time all accrued principal and interest would be due. Under the modification, although Reed would receive a lesser monthly payment (\$25,000 per month), the same amount of interest would accrue and Reed would receive interest on the \$6,000,000 for a longer term, thus resulting in Reed receiving more total money. Instead

of Reed's interest terminating on August 1, 1995, interest would continue to accrue until the \$60 million new business placement benchmark had been met. Courts consistently hold that an agreement to pay interest during the extension period constitutes consideration to support a promise to extend the due date of a promissory note. *See, e.g., Hackin v. First Nat. Bank of Ariz.*, 419 P.2d 529, 531 (Ariz. 1966) ("It is generally held that a debtor's promise to pay interest during the entire period of extension, thereby relinquishing his right to pay less interest by sooner discharging the principal debt, is sufficient consideration for the creditor's promise to extend the time for payment of the note") (citing 10 C.J.S. BILLS AND NOTES § 160, p. 636; 11 AM. JUR. 2D *Bills and Notes*, § 304, p. 330; 1 WILLISTON ON CONTRACTS, (3d ed.) § 122, p. 512; and 85 A.L.R. 327, *Consideration For Subsequent Agreement Extending Time Of Payment*)); *see also Strong v. Sunset Copper Co.*, 9 Wash.2d 214, 220-221, 114 P.2d 526, 530 (Wash. 1941) ("The consideration flowing to the [creditor] was the implied promise of the [debtor] to pay interest during the full period of the extension, at the rate expressed in the instrument; and the promise of the holder to forbear suit for a definite period constituted a good consideration for the agreement upon the part of the maker to pay interest for such full period.").

The consideration for the extension is that AIA is required to pay interest for the entire period of the extension (i.e., to not pre-pay the principal prior to the companies reaching \$60 million in new business placements). Notably, the courts hold that the promise not to pre-pay need not be explicit in the extension agreement, but rather it is implied simply by the extension agreement. *See id.*; *see also Hackin v. First Nat. Bank of Ariz.*, 419 P.2d at 531 ("Furthermore, the debtor's promise to pay interest during the extension period need not be expressed and may be implied from the mere agreement to extend for a definite time."); 85 ALR 327 (explaining that "the implied promise of the [debtor] to continue the payment of interest until the date named